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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 July 2026

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

(1) Baroness Lawrence of Clarendon OBE
(2) Elizabeth Hurley
(3) Sir Elton John CH CBE
(4) David Furnish
(5) Sir Simon Hughes
(6) Prince Harry, The Duke of Sussex
(7) Sadie Frost Law **Claimants**

- and -

Associated Newspapers Limited **Defendant**

- -

David Sherborne, Ben Hamer, Luke Browne and **Hector Penny** (instructed by **Sheridans Solicitors LLP** and **Thomson Heath Jenkins & Associates**) for the **Claimants**
Antony White KC, Andrew Caldecott KC, Catrin Evans KC, Sarah Palin, Hannah Glover and **Ben Gallop** (instructed by **Baker & McKenzie LLP**) for the **Defendant**

Hearing dates: 19-23, 26-30 January 2026, 2-6, 9-13, 16-20, 23-27 February 2026, and 2-5, 9-13, 17-19, 23, 27 and 30-31 March 2026

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Approved Judgment

This judgment was handed down remotely at 2pm on Tuesday 7 July 2026 by circulation to the parties and their representatives by e-mail, by publication on www.judiciary.uk and by release to the National Archives.

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Mr Justice Nicklin :

1. This is the judgment of the Court following the trial of the claims in these actions. It is divided into the following sections.

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A: Parties and background

2. The seven Claimants have brought six separate claims. In summary, they allege that each of them has been the subject of unlawful information gathering by the Defendant ("Associated"). They claim that Associated has obtained their private and/or confidential information using techniques such as interception of voicemail messages, listening into live telephone calls, obtaining of information by deception, and the use of private investigators ("Unlawful Information Gathering" or "UIG"). Once obtained, the Claimants allege that Associated has used this information principally to publish articles in the *Daily Mail*, *The Mail on Sunday* and *MailOnline*, although there are a couple of incidents where the allegedly unlawfully obtained information resulted in no published article. The Claimants seek remedies for misuse of private information (and in one instance, breach of confidence).

3. The Claimants are all notable public figures who probably need no introduction. Baroness Lawrence is the mother of Stephen Lawrence, who was murdered in a racist attack in London. She is a member of the House of Lords. Ms Hurley is an actress and businesswoman. Sir Elton John is an internationally acclaimed recording artist and Mr Furnish, his husband, a well-known film producer and director. Sir Simon Hughes is a former Liberal Democrat politician, who was Minister of State for Justice and Civil Liberties between 2013-2015. Prince Harry, the Duke of Sussex is a member of the Royal Family. Finally, Ms Frost Law is an actress, director, producer, businesswoman and fashion designer.

4. Associated is the publisher of the national newspapers, the *Daily Mail* and *The Mail on Sunday*, and of the global website *MailOnline*. Articles published by Associated, whether in the print editions of its newspapers or online, will be read by millions of people within this jurisdiction and beyond.

B: The Claims and Associated's defence

5. The Claim Form in each action was issued on 6 October 2022. Details of the Claimants' claims are set out in Particulars of Claim in each action. The claims have been amended at various points before trial. Under the heading "*Overview of the Claimant's claim*", each Claimant pleads as follows:

> "3. The Claimant's case is that through its journalists and/or private investigators, blaggers or other third parties instructed on its behalf:
>
> (a) Associated widely and habitually carried out or commissioned illegal or unlawful information gathering activities for the purposes of obtaining, preparing or furthering the publication of articles in its newspapers … ("the Unlawful Acts"), and
>
> (b) Associated carried out or commissioned the same Unlawful Acts for the purposes of targeting the Claimant, as set out in paragraphs … below, exploiting or misusing the information it obtained in relation to [him/her] as the product or direct result of these unlawful activities in stories which it then published as articles in its newspapers. The articles which the Claimant relies upon are set out in [a] Schedule… to these Particulars of Claim ("the Unlawful Articles").

> 4. The Unlawful Acts which Associated commissioned or carried out included the following: the illegal interception of voicemail messages ("phone hacking"), the listening to and/or recording of live landline or analogue mobile telephone calls ("phone tapping"), the obtaining of private information through deception (such as telephone subscriber details, billing information, confidential mobile phone numbers and ex-directory landline numbers, bank or financial information and confidential medical information ("blagging"), the use or instruction of private investigators (also known as "search agents"), blaggers or other similar third parties or agents ("private investigators") to commit these ("private investigator work").
>
> 5. As referred to throughout these Particulars of Claim, the Unlawful Acts were carried out on Associated's behalf by a large number of different private investigators, many of whom are now well-known for carrying out the same unlawful activities for other newspaper groups such as News Group Newspapers and Mirror Group Newspapers… These private investigators were instructed by *Daily Mail* and *Mail on Sunday* journalists, as well as commissioned or approved of by editorial executives and desk or department heads, many of whom are still employed by or working for Associated in senior positions.
>
> 6. Further, Associated deliberately concealed or covered up these Unlawful Acts both at the time (through the covert way in which they were carried out, the use of euphemistic language in payment requests and other documents, and the misleading presentation of 'sources' in the Articles) and then subsequently (including through false public denials by senior executives on its behalf at the Leveson Inquiry who are still employed by Associated) in order to avoid its wrongdoing being publicly exposed and to intentionally deprive the Claimant (and other victims) of knowledge of facts relevant to [his/her] rights or causes of action against Associated ("the Deliberate Concealment").
>
> 7. If and insofar as necessary, the Claimant will rely upon this Deliberate Concealment, and such loss or destruction or relevant documents which has inevitably occurred during the period, or been caused by an intentional step in the Deliberate Concealment in support of [his/her] case that she is not and should not be statute barred from bringing [his/her] claims under section 32(1) of the Limitation Act 1980."

6. Thereafter, the structure of each Particulars of Claim is similar, with the core allegations being made, in the same terms, by each Claimant.

   (1) First, each Claimant advances a case alleging that Associated's use of Unlawful Acts was both "*habitual and widespread*". Particulars are given of Associated's alleged use of various identified private investigators, both individuals and firms.

   (2) Second, each Claimant alleges that these private investigators were instructed by "*a large number of different journalists at both the Daily Mail and the Mail on Sunday, as well as desks or departments and their respective heads*". The Claimants identify the individuals alleged to have given these instructions to private investigators, some of whom are said to have worked previously for

other newspaper publishers (including News Group Newspapers ("NGN") and Mirror Group Newspapers ("MGN")) where it is alleged similar UIG activities were "*widely and habitually*" practised to obtain similar types of information for publication.

(3) The third section of the Particulars of Claim sets out the Claimants' contention that Associated deliberately concealed the alleged wrongdoing from them.

(4) The fourth section of the Particulars of Claim, which is specific to each individual Claimant, sets out that Claimant's case as to his/her alleged targeting by Associated.

(5) The Unlawful Articles (as defined in Paragraph 3(b) of the Particulars of Claim), said to have resulted from the Unlawful Acts, are identified in Schedule B to each Particulars of Claim.

7. Save for Sir Simon Hughes' case, the Particulars of Claim in each action identify two sets of articles. Schedule B lists the articles relied upon by the individual Claimant as demonstrating the alleged targeting of that Claimant by UIG (and, in most cases, as the "Unlawful Articles" said to be the product of such UIG). Schedule C (served as a confidential schedule) identifies further articles and incidents concerning individuals other than the Claimants. The matters in Schedule C form part of the Claimants' "*similar fact*" case and are relied upon as evidential support for the Claimants' Schedule B cases (including, where relevant, by reference to alleged *modus operandi*/propensity). Sir Simon Hughes does not rely upon any articles in his claim. In his case, Schedule B contains Sir Simon's "*similar fact*" case.

8. When their claims were launched, in addition to the Schedule B allegations, each Claimant advanced a generic case (common to all Claimants) as to the use of Unlawful Acts to gather information for publication and relied on a largely (but not exclusively) inferential case that the identified articles represent the fruits of UIG. The Claimants seek common remedies against Associated of damages and an injunction. In support of this, each Claimant contends that s/he "*has suffered considerable distress and harm, as well as the loss of [his/her] dignity or standing and [his/her] personal autonomy through the Unlawful Acts, its resultant invasions of [his/her] privacy, and its deliberate exploitation and/or misuse of [his/her] unlawfully or illegally obtained information in the Unlawful Articles*".

9. Associated has denied the claims of UIG made by each Claimant. In the alternative, to the extent that the Court were to find that UIG had been proved, Associated relies upon a defence of limitation under the Limitation Act 1980. As to the limitation defence, it is common ground that the acts relied upon by each Claimant occurred more than 6 years before the commencement of the claims on 6 October 2022. As such, Associated would have a defence to any claim unless the relevant Claimant shows, in respect of the claim advanced, that the running of time was postponed by s.32(1)(b) of the 1980 Act.

10. In broad terms, the Claimants contend that facts relevant to their rights of action were deliberately concealed from them and that they did not discover, and could not with reasonable diligence have discovered before 6 October 2016, sufficient facts to give them a worthwhile claim. Associated disputes both elements of that case. It contends that no deliberate concealment, within the meaning of s.32(1)(b), has been proved and,

in any event, that each Claimant had, or could with reasonable diligence have discovered before 6 October 2016, sufficient facts to appreciate that he or she had a worthwhile claim. Accordingly, in relation to any Article or incident in respect of which UIG is proved, the limitation issue requires consideration, first, of whether there was deliberate concealment for the purposes of s.32(1)(b) and, secondly, if so, when the relevant Claimant discovered, or could with reasonable diligence have discovered, sufficient facts to found a worthwhile claim in respect of that Article or incident. Limitation is dealt with in Section G below.

C: Litigation history

11. The path to trial has been marked by a series of substantial interim hearings. The key milestones and decisions in the litigation history are summarised in Appendix 1 to this judgment. Decisions made at those stages, and explained in reasoned interim judgments, were critical in defining the proper scope of the proceedings and set the framework within which the trial has taken place. Throughout this process, the Court has repeatedly emphasised that it is engaged in determining civil claims between parties within an adversarial system, not conducting a public inquiry into the historic practices of a media organisation. The July and October Judgments therefore imposed clear and principled limits on the case, identifying what material was, and was not, relevant and proportionate to the fair determination of the Claimants' claims (see [44]-[48] below). The Claimants sought to challenge the setting of those parameters in the Court of Appeal, but permission to appeal was refused (see [A1.13]-[A1.27]).

12. In addition, several rulings were made during the trial. Those of significance were made in separately published judgments. Largely these concerned the evidence of Gavin Burrows (see [A1.36]-[A1.39] and [A1.44]-[A1.48]).

D: The evidence

13. Before turning to the individual claims, I identify the evidence presented at trial and the approach I adopt to assessing it. The evidence falls into two principal categories: (i) documentary evidence; and (ii) witness evidence (given either live, by way of unchallenged witness statement or by way of hearsay).

(1) Documentary evidence

(a) The available documentary record

14. The documentary record in these proceedings is the product of standard disclosure undertaken against a complex pleaded landscape: seven Claimants, wide date ranges, a substantial number of pleaded Schedule B and Schedule C articles, numerous pleaded associates, and a large number of pleaded journalists/editors/executives and pleaded third-party investigators ("TPIs") (with aliases).

15. In broad terms, the material available to the Court comprises: (i) contemporaneous documents (hard copy and electronic) retained by Associated; (ii) records generated by Associated's historic financial and editorial systems (to the extent still accessible or recoverable); (iii) documents obtained from third party repositories (for example, cuttings obtained from the British Library); (iv) disclosure from the Claimants (including documents held by the individuals engaged by the Claimants to assist with

research in the litigation ("the Research Team")); and (v) material generated in the course of this litigation, including disclosure statements, EDQs, and correspondence about the scope and method of searches.

(b) Associated's disclosure searches: scope and product

16. Associated's evidence (principally the eleventh witness statement of Francesca Richmond) describes a wide-ranging disclosure exercise carried out over approximately two years, in accordance with Associated's EDQs and disclosure statement/schedules. The search encompassed both hard copy and electronic sources and was directed to the issues raised by the statements of case, including (in particular) the pleaded targeting periods, the pleaded Schedule B and C articles, pleaded associates, pleaded journalists and pleaded TPIs.

17. By way of overview, Ms Richmond's evidence identifies that documents were searched for, collected and reviewed from a broad range of sources, including (non-exhaustively): hard copy material at Crown offsite storage; material held at Associated's offices (including notebooks/diaries of pleaded journalists, legal department files, cash payment records, payment-for-information forms and cuttings); cuttings obtained from the British Library; documents obtained from custodians; hard copy financial records at Iron Mountain; external adviser/legal department files; email data for 110 custodians; the Atex editorial content management system; editorial and financial shared drives; financial data in Agresso (including data restored from a back-up for searching); account information in Lotus Notes; scanned expense forms; call records (iTiger and Tangoe); and Dictaphone/microfiche tapes located in boxes from the Crown facility.

18. Ms Richmond's evidence further records that Baker McKenzie reviewed almost 40,000 electronic documents returned by the searches, and that substantial hard copy review work was undertaken (including, as at October 2024, over 3,400 hours of hard copy review and manual review of large quantities of cash book entries, and the assessment of over 1,000 notebooks to identify ownership and date ranges).

19. In the July Judgment, when determining the Claimants' disclosure application, I summarised Ms Richmond's evidence as including that 316 boxes from Crown and 6 boxes from Iron Mountain had been reviewed, and that 229 were found to contain nothing of relevance: see [142(4)].

20. At the stage of Ms Richmond's eleventh witness statement, some 2,118 documents had been produced for inspection, including 432 hard copy financial records and 597 electronic financial records. Further disclosure has been provided since then.

(c) Assessment of the disclosure exercise

21. I addressed the adequacy of Associated's disclosure exercise at the interim stage. In the July Judgment, when refusing the Claimants' application concerning disclosure, I held that the application was premised largely on an assumption that Associated and its solicitors had not done the disclosure exercise properly, and I was satisfied that such an assumption was "*wholly unwarranted*" ([148]). I recorded that Ms Richmond had made several witness statements explaining the disclosure process; that her evidence was "*detailed and straightforward*" and not substantially challenged. I concluded that there

was nothing in the evidence that led me to suspect that Associated's solicitors had not been carrying out their duties fully and effectively ([149]-[151]). Those findings form the background against which I have described in this judgment the scope of the documentary searches undertaken and the documents which remain available.

22. Insofar as it is necessary to address the point again in this judgment, I remain satisfied, for the reasons already given, that Associated and its solicitors approached the disclosure exercise conscientiously and diligently.

(2) Missing documents: categories and significance

23. Notwithstanding the conscientious and diligent disclosure exercise, large categories of documents are unavailable, either because they have been lost or destroyed. There remains a possibility that the searches that have been carried out have failed to locate some relevant documents. In litigation of this size, that possibility cannot be eliminated if the costs of disclosure are to remain proportionate.

(a) Categories of potentially significant missing material

24. The principal categories of potentially significant missing material are:

    (1) underlying invoices and (where applicable) schedules/work descriptions supporting payments to TPIs and enquiry agents, including the frequent absence of "*second pages*" itemising what was done;

    (2) the resulting gap between what can be shown from surviving ledgers or payment summaries (amounts and timing) and the missing underlying documentation which would have borne on the nature, purpose and lawfulness of the TPI work;

    (3) gaps in contemporaneous communications (including email records for relevant custodians) that might otherwise have assisted in reconstructing commissioning, approvals and sourcing;

    (4) the partial survival of internal accounting compilations and related working papers, leaving uncertainty as to the scope and purpose of certain exercises; and

    (5) discrete areas where the parties advance competing submissions about the significance of an apparent "*absence of trace*" notwithstanding routine deletion and the passage of time.

(b) Why documents are missing

25. The parties are agreed, at least at a high level, that the documentary record is incomplete. The reasons are, for the most part, unsurprising in litigation of this age and scope. The events alleged span many years and a substantial proportion of the relevant period pre-dated any anticipation that documents might need to be preserved for litigation; established retention and destruction practices applied in the ordinary course for certain categories of record (particularly routine financial records); and the documentary picture is uneven because it is drawn from legacy systems, archives and storage arrangements that changed over time, and because historic systems were not all preserved in a form enabling comprehensive retrospective reconstruction.

(c) How missing documents bear on the Court's task

26. The existence of gaps in the documentary record does not, of itself, resolve any issue in dispute. The Court must avoid treating disclosure as a "*numbers game*", or proceeding on the basis that the scale of historic payments or the volume of missing invoices compels any particular conclusion. What matters is the forensic significance of what is missing, assessed by reference to what survives and the issues the Court must decide.

27. The Claimants' strongest point is not simply that "*there must have been more documents*", but that many missing documents are of a kind which – had they survived – could have had probative value beyond the ledgers. A recurring example is the absence of invoice schedules (or "*second pages*") that itemised work done, because those materials would have been capable of bearing directly on the nature of the activity commissioned (and, in turn, whether the work was likely to have involved UIG), rather than merely evidencing that a payment was made at a particular time.

28. That said, the Court must be careful not to reverse the burden of proof. The absence of documents that might have been helpful cannot substitute for proof that UIG occurred in any given case; nor does it follow from incompleteness that missing documents would necessarily have assisted the Claimants. The Court must decide the issues on the evidence that is available – documentary, witness and circumstantial – bearing in mind both the limitations created by the passage of time and the risk of overconfident inference building from incomplete records.

29. Finally, when attaching weight to a gap in the record, it is important to distinguish between (a) documents that were once likely to have existed but are no longer available because of ordinary retention/destruction or the passage of time, and (b) the separate possibility that a proportionate search failed to locate a small number of surviving relevant documents. The former is inherent in litigation of this kind; the latter is possible in any large disclosure exercise. Neither, without more, permits a general presumption about what missing documents would have shown.

(3) Third-party investigators ("TPIs"): nature of the documentary and witness evidence

30. A substantial part of the documentary and witness evidence concerns the use by journalists of third-party investigators ("TPIs"), including enquiry agents, search agencies and private investigators. In the parties' submissions, "TPIs" is used as a convenient shorthand to describe those external sources of information.

31. The surviving documentary material relating to TPIs falls into several categories. These include:

    (1) invoices and payment records (including petty cash and ledger entries);

    (2) in some instances, accompanying schedules or "*worklists*" itemising the work undertaken;

    (3) internal accounting records identifying payments to particular agencies or individuals; and

(4) limited contemporaneous working documents (including, where available, notebooks or correspondence).

32. In many instances, however, the detailed supporting documentation (including the underlying schedules or "*second pages*" of invoices) is no longer available (see further [24]-[29] above).

33. Where detailed schedules or worklists do survive, they record categories of enquiry undertaken by TPIs. These include (by way of example):

(1) obtaining subscriber details for telephone numbers ("conversions" or "reversals");

(2) obtaining ex-directory numbers ("XD");

(3) enquiries described as "area" or "occupancy" searches;

(4) criminal record checks ("CROs");

(5) vehicle registration or keeper enquiries ("veh reg"); and

(6) requests described as "blag" enquiries or, in some instances, "account enquiries" or "Friends & Family" ("F&F") information.

The meaning and significance of these descriptors is addressed further below.

34. The evidence from Steve Whittamore, whose business (JJ Services Limited ("JJ Services")) provided services to several media organisations, including Associated, gives a detailed account of the nature of the work undertaken by TPIs during the relevant period. He describes providing information "*to order*", in response to requests from journalists or editorial desks, and explains that his work included obtaining personal data by means which, in some instances, involved the use of deception (for example, by making pretext calls).

35. Mr Whittamore distinguishes between: (1) enquiries which could be carried out using publicly available or subscribed sources (for example, certain address-tracing work), and (2) enquiries which required access to restricted data or information not ordinarily available without consent. He states that, in practice, some categories of enquiry – such as obtaining ex-directory numbers, telephone billing information, or certain categories of personal data – were frequently achieved using pretext calls ("*blagging*") or by accessing restricted databases through intermediaries.

36. The documentary evidence concerning commissioning and payment for TPI work indicates that requests for such work were frequently made at desk or journalist level and approved through internal financial processes. Evidence from Associated's witnesses describes a high-volume approvals system, in which payment requests (including those for TPI services) were submitted and authorised, often without detailed scrutiny of the underlying work carried out.

37. The surviving records demonstrate that TPI services were used on a recurring basis. However, the extent to which any particular payment can be linked to a specific Article

or incident varies considerably. In many instances, the documentary record evidences that a payment was made at a particular time but does not, on its face, identify:

(1) the subject of the enquiry;

(2) the precise work undertaken; or

(3) whether the information obtained was used in connection with a particular publication.

38. The evidence also demonstrates that, by the early 2000s, some journalists were aware that TPIs might obtain information by means involving deception. Witnesses referred, in general terms, to practices such as "*blagging*" being used to obtain information (for example, by contacting organisations without identifying themselves accurately). The extent of any individual journalist's knowledge or understanding of such practices is a matter which, where relevant, falls to be assessed by reference to the evidence relating to the particular Article or incident.

39. The significance of this body of material – and the extent to which it supports inferences about the use of UIG in any particular case – is considered in Section E below. The present section of the judgment is concerned only with identifying the nature of the material available to the Court.

(4) Approach to the assessment of the evidence

(a) Burden and standard of proof

40. These are civil proceedings. The burden lies on each Claimant to prove the facts necessary to establish each part of his/her claim on the balance of probabilities. In deciding where the truth lies, the Court may take account of the inherent probabilities.

41. Whilst the standard of proof remains the balance of probabilities, the more serious (and inherently less probable) the allegation, the more cogent the evidence required to prove it: ***In re H (Minors)*** **[1996] AC 563, 586**; ***Three Rivers District Council -v- Bank of England*** **[2003] 2 AC 1** [181]. Accordingly, where the Court is asked to make findings of dishonesty or similar discreditable conduct (including allegations of deliberately false evidence), it is entitled to take account of inherent improbabilities and, in practice, more convincing evidence may be required than would be needed for less inherently improbable conduct: ***JSC BM Bank -v- Kekhman*** **[2018] EWHC 791 (Comm)** [55].

(b) The pleaded allegations of UIG

42. Although each Claimant advances, at a generic level, a case that Associated habitually and widely resorted to various forms of UIG, the individual claims must be determined by reference to the particular Articles/incidents and the particular mechanisms of wrongdoing that are pleaded in relation to that Claimant. The generic case cannot enlarge the claimant-specific case. If a Claimant wished to allege, in relation to a particular Article or incident, that it was the product of a specific form of UIG (for example, voicemail interception, phone tapping, blagging or some other unlawful technique), that allegation had to be properly pleaded. That is so not as a matter of

technicality, but of fairness. Allegations of UIG are serious. Associated, and the journalists or others whose conduct is impugned, are entitled to proper notice of the specific wrongdoing alleged in relation to each individual claim and a proper opportunity to answer it. The Court will not make findings of Claimant-specific UIG by reference to unpleaded allegations, or permit a generic allegation of widespread wrongdoing to be used as a substitute for a properly particularised case on the Article or incident in question.

43. During the trial, there were repeated occasions on which allegations were advanced in cross-examination that a journalist had engaged in some specified form of UIG that had not been pleaded in relation to the Article or incident in question. That course was impermissible. I address the particular instances in Section F.

(c) Propensity evidence

44. In interim rulings (see July Judgment [36]-[61] and October Judgment [3]-[22] – Appendix 1 [A1.7]-[A1.27]), the Court set the parameters of this litigation and the proper approach to, and limits of, propensity evidence, which forms a substantial part of the Claimants' case. Given the importance of those rulings to the issues now to be resolved, it is convenient to summarise the principles established.

(1) These are civil claims concerning whether each Claimant can prove, on the balance of probabilities, that he/she was the subject of UIG in relation to the pleaded Articles/incidents relied upon and that the Schedule B Article(s) in question (or other incidents that did not lead to the publication of any article) were the product of such UIG. The Claimants' "*similar fact*" and "*generic*" cases are advanced only as evidential support for that primary, Claimant-specific case. The litigation is not, and will not be permitted to become, a wide-ranging inquiry into Associated's overall practices or the "*scale of wrongdoing*".

(2) Propensity (or similar fact) evidence is capable, in principle, of being admissible in civil proceedings, but its function is limited. Even where propensity is established against an individual, it cannot of itself prove wrongdoing on another occasion. At most, it may provide *some* support for an inference, in the particular case, where other evidence points in the same direction. The drawing of inferences must remain an evaluative exercise anchored in the evidence, not "*optimistic guesswork*".

(3) Propensity evidence must be both logically relevant and probative of an issue the Court must decide. In particular, showing that one journalist (or other individual) tended to use UIG cannot, save in very unusual circumstances, be used to prove that a different journalist did so. Likewise, proof (or attempted proof) of "*widespread*" or "*habitual*" UIG at a corporate level cannot substitute for proof that UIG occurred in any given Claimant-specific incident: the focus must remain on the specific journalist or TPI involved in the pleaded Article or incident, not on generalised allegations of culture, prevalence, or scale.

(4) "*UIG*" is an umbrella description covering different practices and techniques. The probative value of any propensity evidence will therefore depend upon whether it is directed to the *particular* kind of conduct relied upon in the pleaded

mechanism for the incident in question. A demonstrated propensity for one form of UIG (for example, blagging to obtain limited information) does not, without more, support an inference that a different form of UIG (for example, voicemail interception) was used on another occasion. It is not enough to assert "*UIG*" in the abstract: the mechanism relied upon must be articulated and shown to be both credible and evidentially anchored.

(5) There is a two-stage approach to propensity evidence. The first stage is a question of principle: whether the proposed evidence is logically probative (i.e., relevant, as explained by the House of Lords in ***O'Brien -v- Chief Constable of South Wales Police*** **[2005] 2 AC 534**) of an issue in these proceedings. If it is not, it falls at the first hurdle and it is unnecessary to consider case-management exclusion. If it is relevant and admissible in principle, the second stage is case management, in which the Court assesses whether investigation and resolution of the asserted propensity material would be disproportionate, oppressive, or would generate satellite disputes that distract from the real issues.

(6) Particular case-management risks can arise from propensity evidence. Where propensity is said to be established not by undisputed material (such as convictions or admissions) but by contested episodes requiring the Court to resolve substantial collateral disputes before propensity can even be assessed, the litigation risks being distorted by satellite issues. Although a judge-alone civil trial reduces some of the forensic dangers that arise in criminal jury trials, the underlying warning remains applicable: the Court must keep the case within manageable and proportionate bounds.

45. Consistently with those principles, the Court's interim case-management decisions permitted only a limited and proportionate exploration of whether the evidence disclosed could support an arguable propensity case against pleaded journalists/TPIs; and imposed discipline through the pleadings. If the Claimants wished to rely on additional incidents as propensity material, they were required to do so by focused amendments identifying the incidents relied upon; and, in doing so, they were expected to select their strongest, most cogent examples, since cogency (not number) was likely to be determinative.

46. Also consistently with those principles, I have not treated it as necessary or appropriate to resolve every allegation of UIG ventilated in the evidence merely because it was said to bear upon "*propensity*". Where allegations concerned articles or incidents which are not themselves part of the Claimants' claims, I have made findings only where, and to the extent that, the evidence was logically probative of whether the particular pleaded journalist had a propensity to use the particular form of UIG relied upon in the pleaded mechanism for a claimant-specific Article or incident, and where resolving that issue was material to the determination of a disputed issue on such an Article or incident. Otherwise, the investigation and resolution of collateral allegations would risk disproportionate satellite disputes on matters which it is unnecessary for the Court to decide.

47. Mr Bracchi provides an example. In cross-examination, several matters were put to him about his use of investigators and his alleged awareness of unlawful methods, including blagging, "*mobile conversion*", "*friends and family*" searches and subterfuge; he denied

those allegations. But the only pleaded Article in respect of which he was a bylined journalist is Article (27). In deciding that Article, it is unnecessary for me to determine whether, on other occasions and in relation to other, unpleaded articles or incidents, Mr Bracchi did or did not engage in, authorise, or knowingly benefit from particular forms of UIG. No such determination is material to the issues I must decide in relation to Article (27).

48. Finally, the Court made clear that these limits also constrain reliance on materials from other phone-hacking/UIG litigation. Findings in other proceedings between different parties are not admissible as "*facts*" in this litigation; and comparisons with other cases do not provide a "*road map*" for widening these proceedings beyond their proper parameters. Any propensity case (and any underlying wrongdoing said to found it) must be established by admissible evidence in this litigation, within the constraints above.

(d) The fallibility of human memory

49. The passage of time since the relevant events – dating back typically over 20 years, and in some instances almost 30 years – has had an impact on both categories of evidence. Put shortly, memories have faded – in some cases entirely – and many documents are no longer available.

50. It is common ground between the parties that particular caution is required when assessing oral evidence based on recollection of events which occurred many years ago, and that this caution is grounded in well-established authority. Both sides place reliance, as a starting point, on the approach articulated by Leggatt J in ***Gestmin SGPS SA -v- Credit Suisse (UK) Ltd*** **[2020] 1 CLC 428**.

51. In ***Gestmin***, the Court explained that human memory is not a fixed or accurate record of past events, but is malleable and susceptible to unconscious reconstruction over time. Confidence or sincerity in recollection is therefore not a reliable indicator of accuracy. The legal consequence is that, particularly in complex civil litigation concerning events long past, factual findings are more reliably based on inferences drawn from contemporaneous documents and from known or probable facts, rather than on recollections of what was said or done in meetings or conversations, however honestly expressed.

52. The parties are also agreed that ***Gestmin*** does not establish a rigid rule of law elevating documentary evidence above all other forms of evidence in every case. Rather, it identifies a principled and cautious approach to fact-finding in cases where the fallibility of memory is a material concern, and where contemporaneous documentation may provide a more reliable evidential foundation.

(e) The documentary record and its limits

53. Associated emphasises, and the Claimants do not dispute, that in cases such as the present, involving allegations spanning many years, the documentary record is often incomplete. It submits that documents may have been lost or destroyed through the passage of time or pursuant to routine retention and disposal practices; that incompleteness is, in substantial part, a consequence of the age and scope of the claims; and that the absence of documents cannot, without more, support an inference of wrongdoing. It further submits that missing records may be neutral or may disadvantage

Associated by depriving it of contemporaneous corroboration of lawful sourcing, and it relies on the scale of the disclosure exercise undertaken in these proceedings. The Court must therefore guard against assuming that the absence of documentation necessarily speaks to the truth or falsity of disputed events.

54. In that respect, Associated relies on authority recognising that, where the documentary record is partial or fragmented, the Court must evaluate the evidence in the round, rather than treating contemporaneous documents as determinative merely because they exist (or do not exist): ***NatWest Markets plc -v- Bilta (UK) Ltd*** **[2021] EWCA Civ 680** [49]-[51]. The task remains evaluative: the weight to be attached to documents, and to recollection, depends on the circumstances and the issue under consideration.

55. The Claimants, for their part, submit that where documentary gaps arise in circumstances said to involve concealment, destruction, or inherently covert activity, the absence of documents may itself properly form part of the overall evidential picture. They argue that this reinforces, rather than undermines, the appropriateness of drawing inferences from the documents that do survive and from objective probabilities, consistently with the cautionary approach to memory in ***Gestmin***. They also submit that, in appropriate circumstances, the Court may attach evidential weight to the absence of contemporaneous documentation where it is likely that such material would have existed if an account were correct.

56. These competing submissions are reflected in (and must be read alongside) the discussion above (see [23]-[29]), where I identify the principal categories of missing material and explain the limits on what can properly be inferred from absence. The Court's approach is the same throughout: missing documents may affect what inferences can properly be drawn in relation to a particular article or incident, but they do not reverse the burden of proof and cannot substitute for proof of the unlawful act said to underlie the relevant claim.

(f) Absent witnesses and adverse inferences

57. The Claimants attached significance to the absence of certain witnesses and invited the Court to draw adverse inferences from the fact that Associated did not call several individuals to give evidence. Associated rejected that submission. It contended that no adverse inference should be drawn merely from non-attendance, absent a proper evidential foundation, and that such an invitation requires close forensic analysis. In particular, it submitted that the party seeking an adverse inference must identify with precision the inference said to arise, explain why the witness could reasonably have been expected to give material evidence on the issue, and why the inference is justified in the light of the other evidence. Associated also submitted that the Court should have regard to the practical context, including whether the witness is outside Associated's control (for example because the witness is no longer employed by Associated), and whether there is any pleaded allegation which the witness could reasonably be expected to address.

58. The relevant legal principles are not in dispute. In ***Efobi -v- Royal Mail Group Ltd*** **[2021] 1 WLR 3863**, the Supreme Court emphasised that the drawing of adverse inferences from the absence of a witness is not governed by rigid or technical rules: whether any positive significance should be attached to the failure to call a particular witness depends on context. Similar observations appear in ***Volpi -v- Volpi*** **[2022]**

4 WLR 48. The earlier guidance in ***Wisniewski v Central Manchester Health Authority*** **[1998] PIQR P324** illustrates the need to identify the nature and potential relevance of the evidence said to be missing before any adverse inference can arise, while also making clear that the absence of a witness does not, without more, compel such an inference. Where it is said that an adverse inference should be drawn, the first step is to identify with precision the inference (or inferences) said to arise.

59. In practical terms, the absence of a witness may assume evidential significance where (i) there is some evidence on a live issue which calls for an answer (in the sense that it raises a case to answer on that issue), and (ii) it is reasonable to expect that the absent witness could have given material evidence on that issue, such that, in the absence of a credible explanation, it is fair to infer that the witness's evidence would not have assisted the party who might reasonably have been expected to call the witness. But even where those conditions are satisfied, the absence can only provide additional support to an inference otherwise properly open on the evidence; it cannot be used to supply a missing evidential link or to shift the burden of proof.

60. In deciding whether any adverse inference is justified, it is therefore necessary to consider, among other things: (i) the issue on which the inference is sought and the precise inference said to arise; (ii) whether that issue is live on the case as pleaded; (iii) whether it is reasonable to expect that the absent witness could have given material evidence on that issue; (iv) what other relevant evidence bears on the point(s) on which the witness could potentially have given evidence, and the significance of those points in the context of the case as a whole; and (v) any explanation for the witness's absence (including whether the witness was available to give evidence), noting that a credible explanation may reduce or nullify any potentially detrimental effect.

61. For the avoidance of any doubt, during the trial and in closing submissions allegations were made, or sought to be made, touching the conduct of certain individuals who were not parties to these proceedings and who were not called as witnesses. Where that occurred, and unless I expressly state otherwise, those allegations did not form part of any pleaded case I was required to determine. The Court has not heard evidence from those individuals, they have had no opportunity to respond to the allegations, and the Court has not investigated them as part of the issues it had to decide. Any reference in this judgment to such allegations records only the way in which the parties sought to advance their cases. Unless I expressly state otherwise, I make no findings of fact in relation to such allegations or such individuals.

62. I make this point specifically in relation to Sharon Feinstein. Allegations were advanced in submissions that Ms Feinstein had herself obtained information by voicemail interception or other forms of UIG and had passed that information to Associated journalists who knew that to be so. Ms Feinstein was not a party to these proceedings, was not called as a witness, and has had no opportunity to respond to those allegations. They were not the subject of any pleaded case against her, the Court has not investigated them, and I make no findings of fact in relation to them.

(g) Witness memory and serious allegations

63. An important point of divergence between the parties concerns the weight to be given to asserted failures of memory where witnesses are accused of serious wrongdoing. Associated submits that although recollection of detail may fade over time, it is

inherently unlikely that a person would forget whether they engaged in conduct of a fundamentally serious or criminal nature, relying on ***Trill -v- Sacher*** **[1993] 1 WLR 1379**. The Claimants submit that repeated professed failures of memory, formulaic denials, or an inability to account for conduct shown in surviving documents may properly be approached with caution. These are matters of evaluative judgment, to be considered in the context of the evidence as a whole.

(h) Inferences and evaluation

64. Taken together, these authorities emphasise that the drawing of inferences is an evaluative exercise, grounded in common sense. But it is not a licence for speculation: it must be anchored in the evidence. As I held in the July Judgment ([46]), "*drawing inferences is not a process of optimistic guesswork; it is a process whereby the court concludes that the evidence adduced enables a further inference of fact to be drawn*". Whether (and if so what) evidential significance should be attached to missing evidence or absent witnesses depends on the context and upon the totality of the evidence.

65. I shall apply the principles set out in this section of the judgment when I come to assess the evidence in this case.

(5) Witness evidence and hearsay

66. The witness evidence in this case falls into three categories.

(a) Witnesses who gave evidence at the trial

67. The witnesses called to give evidence for the Claimants were (in the order in which they were called): Prince Harry, Elizabeth Hurley, Sadie Frost, Sir Simon Hughes, Dr Evan Harris, Baroness Lawrence, James Hanning, Imran Khan KC, Daniel Portley-Hanks, Graham Johnson, David Furnish, Sir Elton John, Mark Thomson, Anjlee Sangani, Derek Haslam, James Heath and (late in the trial) Jerry Yanover and Gavin Burrows.

68. Associated called the following witnesses (again in the order in which they were called): Paul Dacre, Elizabeth Hartley, Stephen Wright, Richard Pendlebury, David Wood, Paul Henderson, Nicholas Craven, Julian Darrall, Peter Wright, Mark (Chris) Anderson, John Wellington, Alex Bannister, Charles Garside, Rebecca English, Nicole Lampert, Richard Simpson, Sharon Churcher, Richard Price, Caroline Graham, Nicholas Pryer, Katie Nicholl, Charlotte Griffiths, Alison Boshoff, David Dillon, Andrew Buckwell, Heather Briley, Barbara Jones, Sanchez Manning, Sam Greenhill, Paul Bracchi, Richard Kay, Ulla Kloster, Christopher Leake and Baroness Elizabeth Sanderson.

69. I have set out a brief description of each witness (apart from the Claimants themselves), a broad summary of their evidence and my assessment of each witness in Appendix 2 Part A.

(b) Witnesses who were not required for cross-examination

70. Witness statements were filed by the parties for certain witnesses who were not required to attend for cross-examination.

71. The Claimants' witnesses in this category are: Leslie Ash, Emma Beal, Luciana Berger, Kevin Bonavia, Clive Driscoll, Ellen Gallagher, Ben Jackson, Patsy Kensit, Jude Law,

Timur Moon, Sophia Myles, Billie Piper, Bob Quick, Moritz Schirmeister, Dan Waddell, and Steve Whittamore.

72. I have set out a brief description of each witness and a broad summary of their evidence in Appendix 2 Part B.

73. Associated's witnesses in this category are: Colin Joseph Fernandez, Rebecca Hardy, Michael Harvey, David Jones, Peter Logue, Barbara McMahon, Roger Scott, Nicola Taylor, and Jo-Anne Wiltshire.

74. I have set out a brief description of each witness and a broad summary of their evidence in Appendix 2 Part C.

(c) Hearsay evidence

75. The parties filed hearsay notices in respect of certain evidence to be relied upon at trial.

76. I have identified the hearsay evidence for each side, together with a broad summary of that evidence in Appendix 2 Part D (for the Claimants) and Part E (for Associated).

77. The fact that a witness was not required for cross-examination (or that his/her evidence was not challenged) does not of itself determine what weight the Court should attach to it. The Court must assess all evidence – whether given live, untested, or by hearsay – in the round, having regard to its inherent cogency, consistency with other evidence, and the circumstances in which it is adduced.

E: Common themes and recurring evidential issues

78. Before turning to the individual Articles and incidents relied upon by each Claimant, it is convenient to identify several themes and evidential issues which recur across the claims, and which featured centrally in both parties' closing submissions. These are not freestanding issues; rather, they are matters of evidential context and method which inform the assessment of the individual Articles/incidents that follows in the next section of the judgment. The Claimants' written closing submissions were structured to address, first, the use of TPIs and related evidential features, and then to proceed article by article/episode by episode. Similarly, Associated's closing submissions addressed overarching matters (including the approach to inferences and the Burrows allegations) before moving to the individual claims.

(1) The evidential "*building blocks*" and how the parties say they fit together

79. A recurring feature of the parties' submissions is that each Article (or incident) is treated not as an end in itself but as the point at which different categories of evidence are said to converge. The Claimants submit that, in many instances, the Article is the "*window*" through which the Court can infer the underlying intrusion; sometimes because the contents are said to be intrinsically suggestive of UIG (for example, precision about calls or financial details), sometimes because the Article becomes suspicious when combined with the absence of credible sourcing and/or with evidence of the impugned journalist's alleged repeated use of UIG by commissioning TPIs. Associated, conversely, urged a granular article-specific approach, contending that each pleaded Article can be explained by legitimate sourcing and that the Court should resist

"*counterfactual*" narratives that treat the existence of TPIs (or prior misconduct elsewhere) as determinative.

80. Associated also emphasised, in oral submissions, that – given the parameters set for this litigation – any wider "*practice*" case can only be established (if at all) through findings on the pleaded Articles and incidents themselves, and that it would be impermissible to start from an assumption that there was a wider practice and then apply that assumption to the individual claims.

81. These competing submissions make it useful to identify, at the outset, the main categories of material that recur across the claims: (i) contemporaneous editorial material (Atex records, drafts, cuttings and internal communications where they exist); (ii) financial and payment records (invoices, schedules/worklists, petty cash slips, ledger compilations and approval trails); (iii) call data and contact lists, where available; (iv) notebooks/diaries and related working documents; and (v) witness evidence (including evidence that was not tested in cross-examination). The Claimants' closing submissions placed particular weight on what they describe as the "*lacunae*" in the documentary record of payments and invoices, and on the proposition that the surviving financial descriptors are frequently revealing. Associated stressed the incompleteness of the record and the need to evaluate the evidence as a whole, including oral evidence, in deciding what inferences are justified.

(2) Instruction and payment of TPIs: the competing approaches to inference (and the limits of what the evidence can show)

82. A substantial proportion of the parties' closing submissions concerns the significance of evidence relating to TPIs and enquiry agents. The nature of the documentary and witness evidence about TPIs (including the categories of surviving records and the kinds of services described in that material) is set out in Section D above.

83. The dispute at this stage is therefore not about whether Associated's journalists (and desks) commissioned TPI services in the relevant period, or that some TPI work in the industry involved unlawful methods. Rather, the question is how far, and on what evidential basis, the Court may draw inferences from (i) TPI commissioning/payment evidence and (ii) the incomplete record, when determining whether a particular pleaded Article or incident was the product of UIG.

(a) The Claimants' case in overview: TPIs as a pervasive evidential theme

84. The Claimants invite the Court to treat TPI commissioning and payment as a pervasive evidential theme. They submit that the Articles are "*windows*" into the underlying unlawful conduct and that, where direct evidence is sparse (as it often is), the Court may draw robust inferences from a combination of factors: (i) the nature of what was published; (ii) patterns of TPI commissioning; (iii) the absence of a credible lawful account of sourcing; and (iv) the wider newsroom context in which (they say) unlawful methods were routinely used, including to "*get to the story first*", to "*add colour*", or to verify a story.

85. The Claimants submit that the documentary record is materially incomplete and emphasise the gap between the "*known universe*" of payments and the limited number of surviving invoices and associated documents. They contend that this incompleteness

should not disadvantage them in proving UIG, because (on their case) unlawful activity was covert and concealed and the Court should therefore be willing to draw inferences from what remains, including from the fact of missing records in circumstances where (they contend) the full record would have been capable of showing more.

86. In practical terms, the Claimants' approach is that evidence of TPI commissioning may operate in two ways: first, as episode-specific evidence (where payments or records can be linked to a pleaded Article/incident); and secondly as contextual support for an inference (where the alleged unlawfulness is said to be indicated by the nature of the published information and the apparent absence of a cogent lawful explanation). They emphasise that the existence of an arguable lawful source does not necessarily exclude parallel unlawful acquisition.

(b) Associated's response: article-specific discipline; and the relevance (but limits) of the "*overall picture*"

87. Associated's case is that the Court must approach the evidence with article-specific discipline. It accepts that TPIs were used and that some TPI wrongdoing existed in the industry, but submits that this does not establish that UIG occurred in any particular instance, still less that it is properly attributable to Associated in relation to a particular pleaded Article. It argues that much of the Claimants' approach risks impermissible "*inference-upon-inference*" reasoning and, in substance, an attempt to reason from an asserted general culture to individual liability, contrary to the parameters set by the Court's earlier case management judgments.

88. Associated further submits that the incomplete record is at best neutral and may in fact disadvantage it by depriving it of contemporaneous proof of lawful sourcing, particularly given the age of the claims. It rejects the proposition that the Court should extrapolate from gaps in the record to infer what missing documents would have shown. It also emphasises that, in many instances, the Claimants' pleaded attempts to link payment records to particular Articles were not pursued at trial or shifted materially in cross-examination, which (it submits) underlines the risk of speculation.

89. At the same time, Associated accepts (as part of the wider factual background) its use of TPIs. That use – including instances where TPIs had used blagging –was disclosed to the Leveson Inquiry and was examined there. In its closing submissions it records that, following consideration of the Operation Motorman material (including material relating to Mr Whittamore), Associated (like other press core participants) publicly accepted at the Inquiry that "*no positive case was to be mounted … that the Motorman material did not reveal prima facie evidence of breaches by journalists of the [Data Protection Act]*" ("the Leveson Concession"). The evidential picture that emerged at the trial supports and reinforces that conclusion. In the period up to 2007, TPIs instructed by Associated regularly provided information to its journalists in circumstances which raise at least a *prima facie* case that the information had been obtained unlawfully.

(c) The common evaluative questions arising from the parties' competing approaches

90. These competing approaches generate a set of common evaluative questions which recur when the Court comes to consider each pleaded Article/incident:

(1) **Linkage**: is there a sufficiently reliable evidential link between TPI material (including payment records) and the pleaded Article/incident (by timing, target, journalist/desk, or other corroboration), or is the asserted linkage speculative?

(2) **The inferential step**: if no direct linkage exists, what is the precise inferential step relied upon to move from the Article's content (and surrounding context) to a finding that UIG occurred in respect of that Article?

(3) **Alternative lawful explanations**: is there a lawful explanation for the acquisition of the material (public domain, conventional sourcing, tip-offs, legitimate journalism), and is it positively established or relied upon as sufficient to defeat an inference of UIG?

(4) **The role of gaps**: does any gap in the documentary record add weight to an inference in the particular instance, or is the absence neutral (or even exculpatory), bearing in mind that missing documents cannot reverse the burden of proof?

(5) **Propensity/context**: if propensity evidence is relied upon, does it do more than provide background? In other words, does it provide logically probative support for an inference in the particular case when combined with other evidence, or is it merely a generalised invitation to reason from an alleged wider practice?

(d) Schedule C Articles and other "*similar fact*" evidence as context (and its limits)

91. The parties' submissions about TPIs are closely connected to the use of Schedule C Articles and other "*similar fact*" material. The Claimants rely on such material to support inferences about the likelihood of UIG in relation to particular pleaded journalists and, by extension, the pleaded Articles. Associated submits that such material cannot substitute for proof of an unlawful act in relation to the specific Article/incident, and it emphasises the Court's prior rulings that propensity evidence alone is unlikely to establish UIG on any particular occasion.

92. In consequence, where TPI evidence and Schedule C material are relied upon in relation to a particular Article/incident, the Court's task is to keep distinct: (i) the existence of a background of TPI use; (ii) the probative force of any episode-specific linkage; and (iii) the limited contextual role of propensity evidence. In each instance the Court must identify what is truly determinative, and avoid treating an "*overall picture*" as a substitute for the proof required in relation to the particular Article.

93. These principles inform the Article-by-Article analysis that follows. Where a party relies on TPI material as part of the reasoning chain in respect of an individual Article/incident, I make clear (i) what the linkage is said to be, (ii) whether it is relied upon as direct proof or contextual support, and (iii) what weight (if any) it bears in the evaluative exercise required to decide whether UIG is proved on the balance of probabilities in that instance.

(3) Why TPIs were used: lawful options, practical constraints, and inference

(a) Introduction: the issue and the competing explanations

94. The parties' submissions reveal a recurring dispute which bears on many of the Articles and incidents: why journalists resorted to TPIs at all, given the existence of lawful tools and resources available to them, and what (if anything) can properly be inferred from that resort in any particular case. The evidence describing the nature of the TPI material available to the Court is set out in Section D.

95. The Claimants submit that the scale and persistence of TPI use is more readily explained by TPIs' ability to obtain information that could not lawfully be obtained through internal resources; and that unlawful methods were used in three main ways: (i) to get to a story first; (ii) to add "*colour*" beyond what was already known or reported; and (iii) to verify or "*stand up*" a story obtained by other means.

96. Associated submits that resort to TPIs has a more prosaic explanation rooted in the practicalities of newsroom work during the relevant period: speed, convenience, constraints of remote working and connectivity, and routine reliance on external assistance where internal tools were slower or not readily available; and that none of this permits a leap from "*TPI use*" to "*UIG in a particular Article*".

(b) Lawful options (and their practical limits)

97. The evidence shows that Associated's journalists had access to lawful tools and internal resources capable of assisting with at least some categories of enquiry (for example, electoral-roll based tools and other internal databases). The existence of such tools is not in dispute (see e.g. the evidence of Peter Logue ([A2.543]-[A2.546]), but the parties dispute what follows from it.

98. Associated relied on evidence that (particularly in the early 2000s) journalists were often "*out on the road*" with limited remote connectivity, and that practical constraints sometimes made it easier to obtain information by telephone from an external agency than by using internal systems. Witnesses referred to the absence (at the relevant time) of modern remote access, the limitations of internal tools, and the need for speed in a competitive newsroom.

99. Rebecca English, for example, accepted that electoral roll records were available on company computers, but explained the practical difficulties of access and reliability in the period in question and the working conditions for journalists in the 2000s:

> "We had limited access to electoral rolls… you didn't have internet access in those days… so sometimes it was easier to be able to ring a company and double-check with them the information you needed to get".

100. Similar "*practicality*" evidence was given by Nicole Lampert (from the showbusiness desk context), describing pressures of speed and the lack of ready access to internal systems outside the office, including that she did not have a computer at home at that time and that early morning operational needs could drive resort to external assistance. When it was put to Paul Bracchi in cross-examination that he could get addresses from the databases available, he answered:

> "Absolutely. In a perfect world, where the clock's not ticking and there's 101 things to do, I could well have done, but it was inefficient, unreliable and slow. And so, yes, the default position for just about everybody in Fleet Street at that time was to use the Scotts, and I did so".

101. It was a recurring theme, in the evidence of Associated's journalists and editors, that TPIs were used as a time-saving mechanism in circumstances where internal searching was said to be slower or impractical. In a document prepared in advance of giving evidence to the Leveson Inquiry, Peter Wright addressed why Associated used Mr Whittamore: "*Search on the internet was in its infancy, and reporters did not have laptops with internet access. He had databases which could save an enormous amount of time. You cannot write stories without putting the facts to the people involved*".

102. That latter point was a feature of the evidence of several journalists: it was often essential to obtain contact details for people who were the subject of, or connected to, potential articles, either to pursue inquiries or to put allegations to them ahead of publication. The realities of a competitive newsroom meant that, in many contexts, such information had to be obtained quickly.

103. The Claimants submit that these practical points do not provide a complete explanation for the extent of TPI use where (on their case) internal tools were capable of supplying the same lawful information as the journalists said they needed; and that this may support (though does not by itself prove) the inference that TPIs were used because they could obtain information by methods internal resources could not lawfully deliver. Importantly, the evidence does show that the use of TPIs was not confined to isolated "*urgent*" moments. It was, at least in some departments, part of an established resource, reflected in repeated commissions and routine approval of invoices.

(c) How TPIs were commissioned and paid

104. A further aspect of the "*why*" question concerns the mechanics of commissioning and authorisation. The evidence supports the proposition that requests for external enquiries were, in many instances, processed through high-volume approval mechanisms. Associated relied on this as part of its practical explanation for how TPI use could occur frequently without granular scrutiny at each point of authorisation. The Claimants relied on it as evidence that the system could enable repeated commissions without meaningful interrogation of what was being obtained and by what means.

(d) What TPIs were asked to do

105. At this level of generality, it is not possible to identify a single coherent reason why TPIs were used across all departments and all periods. The evidence and submissions indicate that TPIs could be commissioned for a range of purposes. In some instances, the purpose asserted is plainly consistent with routine journalistic practice (for example rapid assistance in locating or contacting individuals). In other instances, the categories of enquiry described in surviving records are of a kind that are not readily explicable by routine lawful enquiry, and the parties dispute whether and what a journalist would have understood about how that information was being obtained.

106. The key point for present purposes is that the reason TPIs were used, and what (if anything) can be inferred from that use, must ultimately be assessed by reference to

the particular Article/incident and the evidential "*building blocks*" said to connect it to UIG. This section therefore provides an evaluative framework and does not seek to resolve, at a general level, whether TPI use is more consistent with lawful convenience or unlawful capability.

(e) Blagging, "*colour*", and what journalists understood

107. The parties' explanations diverge most sharply where TPI use is said to involve the addition of "*colour*" to a story (for example, details of private calls, private reactions, or private state of mind) rather than merely locating someone for comment. The Claimants submit that it is precisely this "*extra*" content that commonly signals UIG and that it was obtained either by TPIs or by journalists themselves using unlawful methods; and they emphasise that such content may be present even where the broad subject matter has been widely reported.

108. Associated submits that this approach risks becoming "*spot the difference*" reasoning which misunderstands journalism, particularly in long-running, widely covered stories where new reporting builds by accretion on layers of prior reporting (the "*seabed*" metaphor relied upon in closing). It submits that the presence of additional detail does not, without more, justify an inference of UIG. It may reflect lawful sources, follow-up enquiries, memory or note-taking practices, or legitimate reconstruction or inference from what was already circulating.

109. A connected dispute concerns what journalists understood about "*blagging*". The evidence demonstrates that "*blagging*" (commonly understood to be obtaining information by deception, including a failure to identify oneself properly) was a method sometimes used by TPIs. In her evidence, Nicole Lampert accepted that she "*did sometimes ask*" ELI to obtain information which, "*looking back… could have involved them blagging or them not properly identifying themselves when making enquiries*". She gave as an example "*phoning up hotels in order to find out where someone was if it was a celebrity staying in the UK*". She added, however, that she never asked ELI to obtain financial or medical information or to hack phones, and said that she would not have imagined they would (or could) do so.

110. David Dillon accepted that, in his early years at the *Mail on Sunday*, journalists (including him) sometimes used search agents to obtain addresses, ex-directory numbers and to "*spin*" telephone numbers or vehicle registrations. He describes search agents as a time-saving "*shortcut*" for locating and contacting people, and says that, at the time, it did not cross his mind that such enquiries might involve private information or unlawful methods. He maintained that it was only when he was interviewed by the police, in 2004 (Operation Glade), that he learned that Mr Whittamore had obtained registered keeper details via unlawful access to Police National Computer data. He says that this came as a surprise and that he thereafter became more cautious, with a direction following later not to use Mr Whittamore, and (following a subsequent ICO investigation) a broader ban on search agents across Associated. He also acknowledged that, in the early 2000s, limited forms of subterfuge were not uncommon (including hotel enquiries). In cross-examination, he accepted that another enquiry agent, Jonathan Stafford, could be described as a "*blagger*" who used "*minor subterfuge*". He nevertheless drew a distinction between such conduct and the acquisition by deception of inherently private material (such as medical or bank records), which he says he never sought and would have refused.

111. As Mr Dillon's evidence shows, blagging itself also covers a spectrum of activity ranging from sophisticated deception to obtain highly sensitive information (e.g. medical information or records) to low level subterfuge to obtain more prosaic details (an example was given by a journalist, Sam Greenhill, of calling estate agents to identify who was handling a particular sale – see [A2.430]).

112. The Claimants contend that the admitted use of blagging, when viewed alongside the continued and (they argue) extensive use of TPIs despite the existence of lawful tools, supports an inference that TPIs were preferred because they could deliver information that internal resources could not lawfully deliver. Associated's witnesses did not uniformly embrace that characterisation; rather, they tended to emphasise operational necessity and the fact that journalists were trying to obtain information quickly in a competitive environment.

113. Overall, the evidence provides a coherent explanation justifying some resort to TPIs: newsroom time pressure, historically limited remote connectivity, and internal tools that were not always convenient or reliable in practice. However, the evidence also shows that TPIs were being used to obtain information which, put neutrally, raised questions as to how it had been obtained lawfully and that TPIs could be engaged and paid for without systematic scrutiny at the point of authorisation. There is also evidence that "*blagging*" was at least sometimes part of the service provided by some TPIs and that several journalists were aware (at least in general terms) that this could occur. The extent to which any individual journalist did (or did not) understand what was being done by a TPI in a particular instance is an Article/incident-specific question.

(f) Overall assessment: what can properly be inferred

114. The evidence supports several propositions of general relevance, but none is determinative in itself.

(1) First, the existence of lawful internal tools, and the fact that TPIs were nonetheless used, is not by itself sufficient to found a conclusion that TPIs were used because they employed unlawful methods. The reality described in evidence is more nuanced. Internal tools existed, but there were practical constraints; and TPIs were used in circumstances which may range from benign convenience to potentially unlawful acquisition.

(2) Second, the Claimants' submission that TPIs were used to add "*colour*" or to verify stories is capable, in principle, of being relevant to the inference exercise. But it does not relieve the Claimants of the need to identify, for each Article/incident, a proper basis upon which to draw the invited inference of UIG; grounded in evidence probative of UIG in that instance.

(3) Third, Associated's submission that journalism often involves lawful sources and reworking of prior reporting is also capable, in principle, of explaining why TPIs might be used (for convenience) and why articles may contain additional detail without UIG. Whether that explanation is sufficient in any particular case depends on the nature of the information published, the presence or absence of Article-linked evidence, and the credibility and cogency of the episode-specific explanation.

(4) Fourth, and importantly, neither party's general account resolves any particular claim. At this general level, it is neither possible, nor helpful, to conclude that TPIs were used "*because*" they provided unlawful services, still less to generalise about what any particular journalist must have known. The Court must avoid generalisation and decide, for each pleaded Article/incident, whether UIG is proved on the balance of probabilities, bearing in mind the limits of propensity evidence and the need to avoid inference-upon-inference reasoning.

115. I therefore treat the material considered in this section as providing context for the Article-by-Article evaluation, not as providing a freestanding route to liability. Where the Claimants rely on "*TPI use*" as part of an inferential chain, I will identify and evaluate the specific evidential link(s) said to connect that chain to the Article/incident in question. Where Associated relies on practical constraints or lawful sources as alternative explanations, I will assess whether those explanations are positively established or whether they are relied upon as sufficient to prevent the drawing of an unlawful inference.

116. It is against that framework that I shall assess the specific Articles and incidents in Section F.

(4) The incomplete documentary record

117. A recurring feature of the parties' submissions is the significance (if any) to be attached to gaps in the documentary record when determining whether particular Articles or incidents were the product of UIG. The Claimants emphasise the limited surviving invoice and work-description material and submit that, where (on their case) UIG was covert and concealed, the Court should not treat the incompleteness of the record as operating to their disadvantage. Associated contends that incompleteness is an unsurprising consequence of the age and scope of the claims and cautions against treating absence as probative of wrongdoing.

118. The parties' dispute is not about whether records are missing: that is common ground. The dispute is about what follows from that fact in any inferential exercise the Court must undertake. In particular, the Claimants submit that the Court may attach weight to the absence of invoices and schedules which (they contend) would ordinarily have existed and might have identified what was done and why. For its part, Associated submits that missing documents are at best neutral and may equally deprive it of contemporaneous corroboration of lawful sourcing.

119. In support of their submission on incompleteness, the Claimants relied particularly on the late disclosure by Associated, on 24 September 2025, of further documents located in three boxes which had not previously been reviewed as part of the standard disclosure exercise (described by the Claimants as "*Pandora's box*").

120. On Associated's evidence, those boxes were among five boxes recalled from off-site storage, in June 2024, by an operational assistant in the Managing Editor's office and kept in a storeroom at Associated's offices. In the week commencing 8 September 2025, during an administrative reorganisation, assisted by an in-house paralegal, the boxes were opened for storage/logistics reasons, and it was observed that they might contain documents potentially relevant to these proceedings. The boxes were then sent to Baker McKenzie for review (received on 22 September 2025), leading to the supplemental

disclosure on 24 September 2025. Associated rejects any suggestion that these events involved concealment from its legal team, emphasising that the boxes were listed on the off-site index and could have been called up for review had they been selected under the disclosure methodology.

121. The Claimants contend that this episode (and the further review work which followed it) resulted in very late disclosure of significant and previously undisclosed payment ledgers/financial reports (generated in June 2011) relating to some key TPIs, as well as some further invoices. There can be no doubt that the June 2011 ledgers/financial reports disclosed in this process are significant: they illustrate the scale of payments to certain TPIs and some of the targets of the enquiries. They enabled the Claimants to pursue additional lines of enquiry. The Claimants submit that the June 2011 material suggests some form of internal exercise or investigation into the use of certain TPIs. However, the purpose of that exercise (if there was one) was not established in the evidence at trial.

122. My assessment is similar to the approach I have set out in Section D. At this level of generality, the existence of missing documentation does not permit a general conclusion about wrongdoing (or lawful behaviour). The Claimants have not invited findings of deliberate destruction designed to frustrate the fair determination of these claims. Beyond that, I do not consider it possible or useful to make findings, at this general level, about whether any internal exercise took place in June 2011, by whom, or for what purpose. In any event, even if such findings were possible, they would be unlikely to assist the resolution of the particular Articles and incidents which I must determine.

123. The practical consequence is that, in respect of each Article or incident, it may be relevant to consider the evidential weight (if any) of: (i) missing invoices, schedules or "*second pages*" which might have itemised what was done; (ii) ledger entries and other aggregated payment records which evidence payments but not necessarily the underlying activity; and (iii) the extent to which the absence of contemporaneous sourcing documentation is neutral, exculpatory, or supportive of an inference when assessed alongside the Article content and any available linkage evidence. The evaluation remains Article-specific and anchored in the evidence as a whole.

(5) Steve Whittamore/JJ Services: the nature of his services and the limits of the inferences

124. The evidence relating to Steve Whittamore, and his company JJ Services, is treated by the Claimants as a common evidential pillar. In their closing submissions, the Claimants provided a specific section devoted to the issue within their general discussion of private investigators and returned to Mr Whittamore again within their discussion of "*propensity*". It is also apparent from the parties' submissions that the Whittamore material is relied upon in two conceptually distinct ways: first, as episode-specific evidence where an invoice/work list (or other document) can be linked to a pleaded Article/incident; and second, as part of a broader similar fact/propensity narrative about what certain categories of requests and descriptors tend to signify.

125. The wider background to Mr Whittamore's activities includes the Information Commissioner's Office ("ICO") investigation, known as Operation Motorman. That investigation led to a raid on Whittamore's premises and, subsequently, to the publication by the ICO of two reports: "*What Price Privacy? The unlawful trade in*

confidential personal information" (10 May 2006) and "*What Price Privacy Now?*" (13 December 2006). Those reports have no direct bearing on the issues I must decide in this judgment, but they provide contemporaneous context about the ICO's assessment of the material obtained in Operation Motorman and the categories of information involved. They are summarised in the Limitation Judgment ([19]-[22]).

126. In his witness statement served for trial, Mr Whittamore describes himself as a private investigator who ran JJ Services. He states that he began his career doing debtor tracing work for lenders, was approached in the mid-1990s by the newspaper industry to help "*find people*" and perform other information-gathering tasks, and that he first started working for the *Daily Mail* and *Mail on Sunday* around the middle of 1998.

127. Mr Whittamore sets out the services he says he provided for Associated's newspapers (directly, but mostly through sub-contractors). These included: (a) mobile and landline "*conversions*"/"*reversals*" (subscriber name and address for a given number), which he says was "*nearly always*" obtained via pretext calls; (b) obtaining criminal records, which he says were obtained through a contact with access to the Police National Computer; (c) "*blags*" (pretext calls) to obtain personal data (including from the DHSS and banks), which he says were typically reflected in invoices and priced higher; (d) obtaining telephone bills and itemised billing records ("telephone accounts") by pretext calls to phone companies; (e) obtaining BT "*friends and family*" numbers in the same way; (f) obtaining ex-directory numbers, which he says were "*nearly always*" obtained by pretext calls (with legitimate acquisition said to have been extremely rare); and (g) vehicle registration/keeper enquiries, initially via a DVLA contact and later via a contact with Police National Computer access.

128. He also describes providing "*area*" and "*occupancy*" searches to find addresses, often using credit reference agencies and subscribed sources. He characterises his business as "*working to order*": providing what was requested and not supplying additional unsolicited information. He adds that, so far as he was aware, his sub-contractors used untraceable pay-as-you-go mobile phones and used deception to obtain private information; he says he was not aware precisely how they obtained the information.

129. Mr Whittamore states that his premises were raided by the ICO, in March 2003, and that, in April 2005, he was prosecuted and convicted of breaches of s.55 Data Protection Act 1998, receiving a conditional discharge. He adds that some titles ceased using him after his conviction, but that Associated continued to use his services; stating that they remained his "*best customers*" until April 2007, when Associated ceased using his services.

130. He describes his manuscript "*workbooks*", seized by the ICO, which he says were used to record commissions and to generate detailed invoices. He states that the "*Yellow Book*" recorded commissions for the *Daily Mail* and *Mail on Sunday* between approximately early 1999 and March 2002, and the "*Green Book*" recorded commissions between approximately March 2002 and March 2003. He says those books recorded (among other things) the commissioning journalist, the newspaper, the target, the activity commissioned (with examples of abbreviations such as "*DVLA*", "*CRO*", "*XD*", "*veh reg*", "*blag*", "*area*", "*occ*"), some of the "*product*" (for example phone numbers), and the name of his sub-contractor. He distinguishes these workbooks from separate notebooks in which he recorded incoming requests contemporaneously.

131. Mr Whittamore also refers to contact lists. He describes a pre-March 2003 contact list (seized by the ICO) as containing the mobile numbers and extensions of numerous Associated reporters and some desks, and says that he updated it only after speaking with the individual concerned. He also refers to a later contacts list, from around 2007, and identifies senior and desk-level contacts within the *Daily Mail* and the *Mail on Sunday*.

132. A central theme of Mr Whittamore's evidence concerns his invoicing practice. He states that invoices to Associated were in two parts: (i) a cover sheet with the total sum (including VAT) and the description "*Confidential Inquiries*" for finance processing; and (ii) a detailed work list addressed to the relevant department head, breaking down the work done, identifying the commissioning journalist and target, the price of each enquiry, and describing the type of work (he gives examples of ex-directory searches, criminal records checks, vehicle registration checks, mobile phone conversions and blags). He says he included such detail so that there would be "*no doubt*" in the minds of those approving payment what was being paid for and who commissioned it.

133. Mr Whittamore states that, after the March 2003 raid, he did not continue work involving access to the Police National Computer or DVLA, but continued telephone-related work (ex-directory numbers, mobile phone conversions, itemised billing enquiries and blags) using the same methods and some of the same sub-contractors. He further states that journalists who used his services regularly, and the desk heads who sanctioned payment, "*knew full well*" that the information was obtained through illegal means such as blagging; he describes the work he offered as "*mainly a blagging service*". He also states that his invoices/work lists were sufficiently detailed that those checking and paying them would have seen the nature of the work and the commissioning journalist. These are matters of evidence to be evaluated in the context of the other materials and the issues in dispute; their weight falls to be considered where relevant to the claimant-specific issues.

134. The Claimants have placed significant reliance on the passage in Mr Whittamore's statement where he says that he is "*in no doubt*" that all journalists who used his services on a repeat basis, or worked in newsrooms that were regular users, "*knew that the information was obtained through illegal means such as blagging*" and that they each knew "*full well*" that he was a "*practitioner of the 'Dark Arts'*", a term used by him to refer comprehensively to obtaining information through illegitimate means.

135. Whilst I will attach appropriate weight to Mr Whittamore's evidence, when it comes to deciding the individual claims, and notwithstanding that he was not required for cross-examination by Associated, that passage is not determinative of any issue I must decide. Consistently with the principles I have set out as to the Court's approach to the assessment of evidence, propensity and the drawing of inferences (see Section D(3) above), I am not bound to accept a witness's generalised assertion (still less one that amounts, in substance, to a broad statement of belief about what unnamed journalists "*must have known*") as establishing, without more, the state of mind or knowledge of any particular individual on any particular occasion. The Court's task is evaluative and must be anchored in the evidence as a whole, not on generalised speculation.

136. In particular, whether (i) any individual journalist commissioned Mr Whittamore to use unlawful information-gathering methods, or (ii) was aware (at the time) that the information being supplied by him was the product of UIG, are questions to be resolved,

where material, by reference to the totality of the evidence relevant to the specific Article/incident under consideration. That includes (depending on the issue) the nature and detail of the contemporaneous documentation (including any work lists, descriptors and approval trails), the surrounding circumstances, and the witness evidence bearing on the particular episode. It cannot properly be answered solely by treating Mr Whittamore's general assertion as a substitute for that episode-specific evaluative exercise. The same is true where the Whittamore material is relied upon in the second of the two ways identified above: as a broader similar-fact narrative about what certain categories of requests or descriptors tend to signify. I accept Associated's submission that, without a sufficiently close link to the particular pleaded Article/incident, such material has limited evidential value in proving any specific allegation. Consistently with the July Judgment, propensity alone generally cannot, itself, establish wrongdoing on a particular occasion.

137. Accordingly, I treat the Whittamore material as potentially important in two respects: first, where it is capable of being connected to a particular pleaded Article/incident; and, second, insofar as it provides contextual assistance as to the nature of the services described by contemporaneous records. In each case, however, the evidential weight (if any) of that material falls to be assessed in the context of the surrounding evidence relevant to the particular Article/incident under consideration.

(6) Journalists: explanations for sourcing

138. In their closing submissions, the Claimants place issues of credibility and propensity concerning a limited number of journalists as of key importance. They contend that various repeated explanations offered by Associated's witnesses (for example that enquiry agents were used only for telephone numbers/addresses/family trees; or "*never asked the TPI to do anything unlawful*"; or that an article was a "*cuttings job*") should be treated with caution, and they submit that the Court should reject such accounts unless supported by concrete contemporaneous documentation. Those submissions are advanced at a general level and are intended to apply across multiple episodes.

139. Associated disputes that characterisation and, in its closings, presents itself as having advanced (and put in evidence) legitimate sourcing explanations article by article, supported by contemporaneous material. It argues that the Claimants' thesis depends on improbable counterfactuals (including, for example, the suggestion that a journalist would tell a colleague or source that the story came from voicemail hacking) and that the Court should be slow to infer criminality where there are plausible benign explanations consistent with journalistic practice. These issues – how far a generic explanation can sensibly be accepted and what weight should be attached to a lack of notes or a recollection failure – are issues that will recur at different points as the judgment moves through the pleaded Articles and incidents.

(7) Alternative lawful explanations: public domain, conventional sourcing, and the limits of negative inference

140. A recurring feature of Associated's closing submissions is that many of the pleaded Articles and incidents can be explained by lawful means: the use of conventional sources (including confidential sources), agency copy, follow-up enquiries, and the accretion over time of material already circulating in the press or otherwise in the public domain. The Claimants submit that such explanations are frequently generic, and that

where an Article contains apparently "*extra*" detail, lawful explanations should not be accepted unless supported by concrete contemporaneous documentation. These competing submissions recur across multiple Articles and incidents.

141. At a general level, two points should be emphasised. First, the fact that an Article contains information that was, by the time of publication, in the public domain (or in circulation within the media) may provide an entirely lawful explanation for aspects of its content, but it does not of itself resolve the question whether any additional material was obtained unlawfully. Secondly, where Associated relies on lawful explanations, it is important to distinguish between (a) an explanation which is positively established on the evidence (for example, identifiable prior reporting, agency copy, or other contemporaneous materials demonstrating the route by which information was obtained), and (b) an explanation which is relied upon more modestly, as sufficient to show that an inference of UIG is not justified on the balance of probabilities.

142. In that context, the Court must be cautious about "*negative inference*" reasoning based solely on the absence of notes, the absence of a surviving documentary audit trail, or a witness's inability to recall the sourcing of a story many years later. The fallibility of memory and the limits of the documentary record are addressed in Section D. Those considerations cut both ways: they may, in an appropriate case, reinforce the need for careful scrutiny of generic explanations; but they do not, without more, justify a conclusion that unlawful methods were used.

143. These points are closely related to the parties' dispute about "*spot the difference*" reasoning, and Associated's submission (advanced in closing) that repeated reporting can accumulate by accretion over time. Whether the addition of detail in a particular Article is more consistent with lawful follow-up and reconstruction, or with unlawful intrusion, is an Article-specific evaluative question. It depends on the nature of the information published, the surrounding context, the extent (if any) of Article-linked evidence (including TPI material where relied upon), and the cogency of the inferential chain said to connect the content of the Article to UIG.

144. I therefore treat "*alternative lawful explanations*" as part of the recurrent evaluative framework rather than as a freestanding defence to be resolved in the abstract. In Section F, for each Article or incident, I identify the lawful explanation advanced (if any), assess whether it is supported by contemporaneous material or other cogent evidence, and decide whether it is sufficient to prevent the drawing of an inference of UIG on the balance of probabilities in that instance.

(8) Attribution and responsibility: recurring issues

145. A further recurring theme in the parties' submissions concerns attribution and responsibility: where UIG is proved (whether carried out by a journalist, by a TPI, or by another third party), what must be shown to attribute that unlawful conduct to Associated, and to treat Associated as legally responsible for the obtaining and use of the information in the pleaded Article or incident.

146. The parties' submissions on attribution are closely connected to the structured way in which the Claimants' case is pleaded. In summary, the Claimants allege that unlawful acts were carried out "*on Associated's behalf*" by journalists and/or private investigators and other agents instructed by them, and that the resulting information was then used in

publication. Associated disputes that such allegations are made out on the evidence Article-by-Article; and it further submits that, even where a third party is shown to have acted unlawfully, the Court must identify a proper evidential basis for treating that act as carried out or commissioned on Associated's behalf in the particular instance.

147. At a general level, and consistently with the approach set out in Section D and in Section F's introductory framework, it is important to keep distinct: (a) whether UIG occurred at all in relation to the particular Article or incident, and (b) if it did, whether and on what evidential basis it is properly attributable to Associated. In many instances, the first question will be determinative: if UIG is not proved, issues of attribution do not arise.

148. Where attribution is in issue, the evidence relevant to it may take different forms, depending on the way the case is advanced for the particular Article/incident. By way of example, it may include: (i) evidence that a journalist directly engaged in the unlawful act; (ii) evidence that a TPI was instructed or paid in circumstances permitting a reliable inference that the information was obtained for the purposes of the Article/incident; (iii) evidence of approval processes, authorisation, or other internal documentation linking a commission to a relevant journalist/desk; and (iv) evidence bearing on how the information was then used in the process of publication. The weight to be attached to any such material will depend on the surrounding evidential context, including the completeness (or otherwise) of the records for that episode.

149. The parties also dispute the extent to which, and in what circumstances, it is permissible to reason from general evidence about TPI use, payment mechanisms, or newsroom practice to the conclusion that a particular unlawful act (if proved) was carried out "*on Associated's behalf*". These submissions reinforce the importance of the disciplined, Article-specific approach: attribution must be anchored in evidence that is probative of the particular commission or act said to underlie the pleaded Article/incident, rather than in a generalised "*overall picture*".

150. In Section F, where it arises, I therefore address attribution as a separate stage of the analysis. I first decide whether UIG is proved in relation to the particular Article/incident. If it is, I then explain whether and why the unlawful act is attributable to Associated on the evidence available, keeping distinct questions of unlawful acquisition, subsequent use/publication, and any issues of authorisation or commissioning that bear on responsibility in the particular instance.

(9) Gavin Burrows: procedural and evidential issues

151. The Burrows allegations were treated by both parties as sufficiently significant and distinct to warrant separate treatment in their closing submissions. The Claimants included a dedicated "*Gavin Burrows*" section within their general discussion of TPIs, and they treat some matters as "*Unlawful Episodes*" rather than published Articles. Associated's closing submissions contain a substantial, self-contained section dealing with the Burrows allegations, including the way in which the case was advanced pre-trial and was put to witnesses, and the forensic consequences of the Claimants' late decision to call Mr Burrows, with the consequent exclusion of the hearsay statements previously relied upon. A further feature of the Burrows allegations is that they have generated procedural and evidential disputes about the use of hearsay material (including the service and scope of Civil Evidence Act notices), document authenticity

and provenance, and the forensic consequences of late attempts to widen the hearsay material relied upon.

152. Associated's closing submissions also frame the Burrows allegations as part of the broader "*approach to the evidence*" and the use (and limits) of hearsay as a means of proving important disputed facts. The document includes references to the trial transcript (including the Claimants' opening downplaying the dependence of the claims on Mr Burrows). Those submissions, and the way the evidence developed at trial, underline that Burrows-related issues are not merely episode-specific but bear on how some of the most serious allegations were advanced and tested.

153. I have set out my conclusions about the evidence of Mr Burrows in Appendix 3.

F: The Articles and incidents

154. In this section of the judgment, I address the individual Articles and incidents relied upon by the Claimants as constituting (or evidencing) misuse of private information and/or breach of confidence. Each side has provided detailed written closing submissions which, in broad terms, proceed Claimant-by-Claimant and then Article-by-Article (or "*episode*"/"*incident*" where no Article was ultimately published).

155. In organising my findings, I have sought to adopt a structure which is (a) intelligible to a non-specialist reader, (b) practical for cross-reference against the parties' written materials, and (c) fair to both sides in ensuring that each pleaded Article/incident is addressed without unnecessary repetition. A feature of the parties' presentation is that some publications are relied upon in more than one Claimant's claim. I deal with such matters once only, and then apply the finding (where relevant) to the relevant Claimant.

156. Although the parties' submissions are largely arranged by Claimant, I consider that the appropriate course in the judgment is to deal with the Articles/incidents in chronological sequence. That is for three principal reasons. First, it enables the fact-finding exercise to proceed in an orderly way through time, avoiding the risk of treating later material as colouring the assessment of earlier events. Secondly, it provides a disciplined basis upon which to assess any alleged patterns of conduct by reference to what is actually established at each stage, rather than by reference to generalised assertion. Thirdly, it assists in keeping distinct (and properly controlled) the different categories of evidence relied upon: Article-specific evidence, contemporaneous documentation, and wider contextual material.

157. Some of the Articles in this section are not relied upon by the Claimants as instances of UIG used towards them, but as evidence of other instances of alleged UIG concerning relevant journalists and upon which the Claimants rely, if UIG is established, as supporting their case that the relevant journalist has a propensity to use UIG. When an Article is relied upon for this "*propensity*" case, it is marked with an asterisk.

158. Largely, the parties' dispute does not concern whether information alleged to have been obtained unlawfully was private or intrusive. The central disagreement is whether the disputed information in an Article (or an incident) was the product of UIG.

159. In practical terms, for each Article/incident I address: (i) what the relevant Claimant says is the essential evidential route to liability; (ii) how Associated says the Article

was sourced (or why the relevant Claimant's case fails); and (iii) the determinative evidential features, including whether the conclusion sought depends on direct proof, permissible inference from contemporaneous material, or (as is sometimes alleged) the cumulative force of surrounding circumstances.

160. A recurrent issue is the proper use (if any) of background or generic evidence –such as evidence about practices, the use of TPIs, payment records, or *modus operandi*. Where such material is relied upon, I make clear what role it plays in the reasoning process for the particular article/incident: whether it is said to provide direct linkage, or whether it is relied upon as context which is said to make one explanation more likely than another. I also resolve, where it arises, the related dispute about the impermissibility of "*inference upon inference*" or reasoning by mere suspicion rather than proof.

161. Questions of attribution and responsibility also arise in a few instances. The parties take differing positions as to what must be shown to attribute unlawful conduct to Associated – particularly where wrongdoing is alleged to have been carried out by third parties. I therefore keep separate the questions (a) whether unlawful information-gathering occurred at all in relation to the article/incident, and (b) if it did, whether and on what basis it is properly attributable to Associated.

162. Associated advances lawful explanations in relation to many of the Articles: for example, prior reporting, public domain material, legitimate tip-offs, or sourcing through conventional journalistic channels. Where such explanations are advanced, I address whether they are positively established, or whether they are relied upon as sufficient to prevent the drawing of an inference that the information was obtained unlawfully. Conversely, where the Claimants submit that lawful explanations are implausible or incomplete, I explain what impact that has on my findings.

163. Finally, both sides have addressed the significance of evidential gaps, including missing documentation. Where a party invites the Court to draw an inference from the absence of records or witness(es), I identify the factual foundation for that invitation, the alternative explanations advanced, and whether (in the context of the case as a whole) any inference is justified and, if so, what weight it bears.

164. Where, in relation to a particular Article or incident, an allegation of UIG was advanced at trial in a form that had not been clearly pleaded or sufficiently particularised in advance – for example, as an allegation of voicemail interception, unlawfully obtained call data, or some other covert mechanism first raised in cross-examination – I have treated that as a matter of forensic significance. Serious allegations of that kind ought ordinarily to be clearly identified in the pleaded case and supported by some proper evidential basis before they are put to a witness. In each instance, I have nevertheless considered whether the evidence as a whole provides a sufficient foundation for the allegation; but I have not treated the private nature of the information, the absence of a complete sourcing explanation, or the late emergence at trial of a more serious theory of UIG as sufficient, without more, to justify a finding that UIG occurred.

165. It is against that framework that I turn to the individual Articles and incidents, dealing with them in chronological order. For Articles, the section heading will identify the headline, the newspaper in which it appeared, the date of publication and (in brackets) the bylined journalist.

(1) "*Lawrence: a public inquiry*": *Daily Mail* 24 July 1997 (David Williams & Stephen Wright)

166. This is the first Article relied upon by Baroness Lawrence in her claim.

167. The Article was published on pages 1–2 of the *Daily Mail*, on 24 July 1997, under the headline "*LAWRENCE: A PUBLIC INQUIRY*" (with the continuation on page 2 under the heading "*The just decision*"), and is bylined to David Williams and Stephen Wright.

168. The Article reported that the Home Secretary, Jack Straw, had decided to establish a public inquiry into the murder of Stephen Lawrence, to be announced the following week. The case advanced at trial ultimately focused on the sentence (under the photograph of the Claimant) stating that: "*The family will decide soon whether to bring a second private prosecution for murder against Jamie Acourt and Norris. They are also considering suing all five for damages*". The Claimant's case was that the words "*decide soon*" (and/or the sentence in which they appear) reflected unlawfully obtained confidential and/or privileged information and/or information obtained by deception (blagging) through Christine Hart for use by Stephen Wright.

169. It is not in dispute (and no complaint was pursued at trial) about the inclusion in the Article of the information relating to the decision to establish a public inquiry. Paul Dacre's evidence was that Jack Straw provided that aspect directly to him, and it was then written up by David Williams.

(a) The issues

170. Against that background, three questions arise: (1) whether the Claimant has proved that the "*decide soon*" wording (and/or any other relevant part of the "*private prosecution/suing*" sentence) was obtained by an unlawful act carried out or commissioned on Associated's behalf (in particular, blagging by Ms Hart), rather than by lawful sourcing and/or permissible inference from material already in the public domain; (2) if so, whether the information was obtained in circumstances importing an obligation of confidence (including, as alleged, legal professional privilege) such that a claim in breach of confidence is made out; and (3) in any event, whether (on the facts found) the information was disclosed for publication in a way inconsistent with the maintenance of confidence. The claim in relation to Article (1) is framed as an alleged breach of confidence.

(b) The evidence

171. Imran Khan KC has acted for Baroness Lawrence for many years. In his cross-examination, it was established that the fact that the family were considering (a) civil proceedings and (b) a second private prosecution had been publicly reported following public statements in February 1997 (including in *The Guardian*), and that *Daily Mail* reporting in June 1997 stated that the family were "*still considering*" whether to bring such proceedings.

172. Baroness Lawrence's position was that she did not voluntarily provide the "*decide soon*" timescale to the *Daily Mail*, and that she would not have provided Stephen Wright with information about when she was going to decide about a private prosecution.

In re-examination, she was taken to the "*decide soon*" sentence and asked whether that timescale was something she voluntarily told the *Daily Mail*; she answered "*No*".

173. In her trial witness statement, Baroness Lawrence did not refer to any call from a journalist purporting to be from *The Guardian* (or otherwise). She said that she did not know who Ms Hart was before these proceedings and did not know that Ms Hart had any involvement with this Article, "*or that she had ever called me as she said she did*".

174. In cross-examination, Baroness Lawrence said that she had no recollection of speaking to Ms Hart (or anyone claiming to be calling on behalf of *The Guardian*). On the issue of whether there was such a call, her answer to the following question in cross-examination (albeit directed to a different point) is of some significance:

> Q: The point I just want to make sure I put clearly to you, Baroness Lawrence, is that if someone rang you and said they were a Guardian journalist, you would expect anything you told them to be published in *The Guardian*, wouldn't you?
>
> A: I would not be speaking to *The Guardian* over the phone, because that's not — that's not how I usually conduct interviews with newspapers. I usually conduct interviews face-to-face. So, if I'm on the phone speaking to somebody, and someone else is asking me questions, I would not have known, and to say, certify, that they are who they say they are. I'm only taking what I hear on the phone. But I don't do interviews like that.

175. Mr Khan's evidence was that (given the earlier reporting) the "*keyword*" in the Article was "*soon*", which he said was not information that would have been available outside the immediate circle of the family and lawyers; he maintained that the contemporaneous "*soon*" element was not something that would have been known publicly.

176. A central plank of the Claimant's case was the recorded April 2022 lunch conversation between James Hanning and Christine Hart, and Mr Hanning's oral evidence about it. Ms Hart was not called to give evidence by either side. The recording was relied upon as containing Ms Hart's account that she had obtained information from Baroness Lawrence by deception in connection with the "*Stephen Lawrence*" story, and as containing an assertion in emphatic terms to that effect.

177. The material was also relied upon as indicating that Ms Hart was "*pretty sure*" that, when she telephoned Baroness Lawrence, she said she was from *The Guardian*, and that she had been paid £75 by Stephen Wright in connection with enquiries said to relate to Baroness Lawrence.

178. The cross-examination of Mr Hanning explored: (a) whether, and to what extent, he was "*leading*" Ms Hart in the exchange; (b) the role of Graham Johnson in prompting topics for discussion at the meeting; and (c) material showing that Ms Hart had, at other times, asserted that she had never spoken to Baroness Lawrence (which Mr Hanning said was later explained as said in anger).

179. Baroness Lawrence also relied on an invoice/remittance entry described as "*W/E AUG 1 WRIGHT ENQS*" for £75 as supporting a link between Mr Wright and the alleged commissioning of enquiries by Ms Hart. Mr Wright denied instructing Ms Hart on this story and denied that the £75 entry related to him. He described his involvement in the

Article as limited to obtaining a comment from the family/campaign at David Williams' request.

180. Finally, Baroness Lawrence also relied on further material said to corroborate the Hart/Wright blagging allegation, including (i) evidence from Detective Chief Inspector Clive Driscoll about a 2025 call referring to a *Guardian-pretext* approach by Ms Hart, and (ii) material relied upon as showing that Ms Hart had recorded Baroness Lawrence's contact details in her Filofax. As to the former, Baroness Lawrence relied upon a short late-served witness statement from DCI Driscoll, which recalled a discrete episode in late 2025. DCI Driscoll describes receiving an anonymous telephone call about Ms Hart's dealings with the *Daily Mail* and Stephen Wright, with the caller suggesting that the information should be passed on to Baroness Lawrence. He further records that, thereafter, he received two text messages from Ms Hart which were deleted before he read them.

181. Although Mr Williams is included in the byline of the Article – and on the evidence played a significant role in its publication – Baroness Lawrence's case at trial as to unlawfulness in respect of the "*decide soon*" wording was advanced on the basis of Ms Hart's alleged blagging for Mr Wright. As such, no inference adverse to Associated can be drawn from Mr Williams not being called to give evidence.

(c) Analysis

182. The recorded lunch conversation with Ms Hart is relevant in two respects: it may support an inference that Ms Hart claimed to have obtained information from the Claimant by deception (including by posing as a *Guardian* journalist), and an inference that she claimed to have done so in connection with work "*for the Mail*", specifically in association with Stephen Wright.

183. At the same time, the weight that can properly be attached to this material depends on its context. It was not a contemporaneous record of 1997; it was a 2022 discussion about what Ms Hart claimed to have done decades earlier. That raises obvious concerns as to the reliability of her recollection at such a distance. The evidence at trial also raised questions about prompting, circulation of documents in advance of the meeting, and elements of reconstruction and inconsistency. Those features bear directly on whether the evidence provides a sufficiently reliable foundation for the specific findings required: (a) that a blagging call occurred in connection with this Article; and (b) that the information thereby obtained was then used by Associated in the Article.

184. Associated submitted that, on the evidence (including Baroness Lawrence's evidence), the "*Guardian blag*" hypothesis was not made out and that the more likely explanation for "*will decide soon*" was that it was an inference a journalist could draw from earlier reporting (including reporting based on, or confirming, statements by Mr Khan).

185. Associated further submitted (in the alternative) that, even if Baroness Lawrence had said words to Ms Hart along the lines alleged, providing that information for publication (even if on a false pretence as to the newspaper making the enquiry) would not be actionable in breach of confidence because she would have been agreeing to publication and the information would not have been obtained in circumstances importing a duty of confidence.

(d) Discussion and conclusion

186. The starting point is that, by the time the Article was published, the "*private prosecution/civil action*" subject-matter had been put into the public domain by public statements and subsequent reporting. Baroness Lawrence's case therefore depends on the proposition that the Article's addition of a contemporaneous timescale ("*decide soon*") reflects unlawfully acquired confidential/privileged information, rather than a permissible journalistic inference from what had been publicly stated earlier and the fact that the question clearly remained live.

187. The recorded lunch material provides some support for the proposition that Ms Hart claimed, in 2022, to have blagged the Claimant in connection with story and to have done so by presenting herself as a journalist from *The Guardian*. That material sits with the Claimant's own evidence that she did not voluntarily provide the "*decide soon*" timescale to the *Daily Mail*, and Mr Khan's evidence that "*soon*" was not information available outside the immediate circle.

188. Nevertheless, when the evidence is assessed in the round, I am not satisfied that Baroness Lawrence has discharged the burden of proving (on the balance of probabilities) that the "*decide soon*" wording was obtained for the purpose of preparing this Article by an unlawful act carried out or commissioned on Associated's behalf. In particular:

    (1) First, the prior reporting establishes that the general subject-matter had already been aired publicly. As such, the probative force of the "*soon*" formulation is limited unless the Court is satisfied that it reflects a specific, contemporaneous communication from within a confidential/privileged sphere rather than inference. I am not so satisfied.

    (2) Second, the lunch recording is not a contemporaneous record of 1997. It is a 2022 discussion about what Ms Hart claimed to have done decades earlier. The manner in which Ms Hart was questioned during the meeting, and particularly the provision to her prior to the meeting of the invoice, mean that there are real concerns whether Ms Hart had any independent memory of what she had done in 1997 and, critically, whether it had been done on the instructions of Mr Wright. Those features do not render the evidence incapable of weight, but they materially diminish its reliability as a foundation for the specific findings required.

    (3) Third, even taking the lunch material at its highest, it does not of itself establish that Stephen Wright commissioned Ms Hart to obtain that information for this Article, or that unlawfully obtained information was used in preparing it. The £75 "*W/E AUG 1 WRIGHT ENQS*" entry is capable of giving rise to suspicion, but (in the absence of a clearer evidential linkage) it cannot substitute for proof of the unlawful act and its deployment in the Article. I also take into account Associated's submission that the remittance material is not, without more, a reliable indicator that any such enquiries were commissioned for this Article.

    (4) Fourth, Baroness Lawrence's evidence as to her usual practice – namely that she did not conduct newspaper interviews by telephone and would ordinarily expect

interviews to be face-to-face – together with the absence of any recollection of there having been any such call, counts against the likelihood that she provided the alleged "*decide soon*" timescale to Ms Hart by telephone in the manner suggested. I bear in mind the Claimant's submission that this evidence was directed to her usual practice, and was given in response to a different point, but even approached on that basis it remains evidence which counts against the likelihood of a telephone blag occurring in the manner alleged.

189. For those reasons, I am not satisfied that Baroness Lawrence has proved that the "*decide soon*" wording (or any other material information in the relevant sentence) was obtained by an unlawful act carried out or commissioned on Associated's behalf, as opposed to being derived from lawful sourcing and/or inference from prior reporting. Nor am I satisfied that the Claimant has established that legally privileged advice was accessed or acquired for the purpose of preparing this Article.

190. For completeness, even if I were to assume (contrary to the findings above) that a telephone call occurred in which Ms Hart, posing as a *Guardian* journalist, elicited from Baroness Lawrence a "*decide soon*" timescale for the purpose of publication, that would not of itself establish a breach of confidence. On that assumed scenario, the information would have been disclosed for publication in the press. Disclosure for publication is ordinarily inconsistent with the maintenance of confidence, irrespective of whether the journalist was (truthfully or falsely) said to be calling for one title rather than another.

191. Accordingly, the Claimant's claim for breach of confidence in relation to Article (1) is not made out.

(2) "*£320,000 for Lawrences*": *Daily Mail* 14 October 2000 (Stephen Wright)

192. This is the second Article relied upon by Baroness Lawrence in her claim.

193. The Article was published on pages 1–2 of the *Daily Mail* on 14 October 2000 under the headline "*£320,000 for Lawrences*", bylined to Stephen Wright.

194. The Article reported that Doreen and Neville Lawrence were to receive £320,000 compensation in settlement of a negligence action against the Metropolitan Police, and included details about the course of negotiations, including (as reported) that the Lawrences had demanded £500,000 and had recently turned down an offer of £250,000.

(a) The issues

195. Baroness Lawrence's case is that the Article disclosed private and restricted information concerning negotiations and settlement terms (including, she says, confidential/privileged detail), and that it was obtained by UIG. Baroness Lawrence relies (following amendment) on the pleaded allegation that the information was unlawfully obtained through payments to private investigators and/or corrupt police officers. In support of that contention, she relies on a £200 cash payment record, dated 21 December 2000, described as a payment to a "*special contact for help on Damilola/Lawrence case*", as supporting the inference that Mr Wright paid for unlawfully obtained information used in this Article.

196. The principal issue is whether Baroness Lawrence has proved that the information in Article (2), that is said to be private/restricted, was obtained by (or as the product of) an unlawful act carried out or commissioned on Associated's behalf. If not, the claim in respect of this Article fails at the first hurdle.

197. If (and only if) unlawful acquisition were established, there would then arise the question whether the information relied upon engages a reasonable expectation of privacy or confidence in the circumstances, and, if so, whether publication was justified in the public interest. In the event, my conclusion on the first issue makes it unnecessary to reach those further questions for this Article.

(b) The evidence

198. The Article itself contains specific figures and narrative detail about the state and course of negotiations, including that the Lawrences had demanded £500,000 and had recently turned down an offer of £250,000.

199. Baroness Lawrence relied, as part of her case on restricted access and confidentiality, on the fact that, at the meeting of the Metropolitan Police Authority ("MPA"), on 12 October 2000, at which the settlement negotiations were discussed, the press and public were excluded for specified items on the grounds of confidentiality. In her second witness statement Baroness Lawrence addressed this Article directly. She said she believed it was a leak from the police, and that, at the time of publication, other than police officers and those at the police with whom Imran Khan KC was negotiating on her behalf, the only people legitimately aware of the information in the Article were her and Mr Khan KC. Mr Khan KC also gave evidence, in general terms, that such information was not authorised by them for publication. Neither was cross-examined on this evidence by Associated during the trial. Baroness Lawrence also relied on the £200 cash payment.

200. In his first witness statement, Mr Wright stated that he had been following the story of the Lawrence family's civil claim during 2000. He said that he had a confidential source, who was then a member of the MPA, and that this source told him that a deal had been done with the Lawrences and confirmed the amount. He said he understood the source was motivated by concern within the MPA that the amount agreed was excessive, and that approval was reluctantly given. He denied paying the source for the information.

201. Mr Wright also addressed the £200 cash payment record. In his witness statement, he said he did not remember the specific payment. He stated that he did not pay the confidential MPA source for the Article (or for any story) and therefore the payment did not relate to this Article. He explained that "*Damilola*" referred to Damilola Taylor and that he had written several articles about that case; he said "*special*" was a word he often used in expense claims to indicate a special investigation or an exclusive.

202. In cross-examination at the trial, Mr Wright accepted that certain negotiation narrative detail in the Article (for example, that a settlement was reached "*after two weeks of negotiations ended in deadlock*") was not found in other coverage. He maintained that the information had been provided by his source.

(c) The parties' submissions

203. Baroness Lawrence submits that Article (2) disclosed highly specific and confidential negotiation/settlement information and that such detail is unlikely to have been volunteered lawfully. She relies upon the £200 cash payment entry, contending that "special contact" is a euphemism for unlawful sourcing and that the more plausible explanation is that Mr Wright made a corrupt payment for confidential police-sourced information used in this Article.

204. Baroness Lawrence further submits that Mr Wright's explanation that "*special*" referred merely to the story rather than the unlawful nature of the conduct was implausible, and that the cash payment provides a contemporaneous documentary foundation for drawing the inference of UIG in relation to this Article.

205. Baroness Lawrence's pleaded case did not identify the payee (or any intermediary) said to have received the £200 payment. However, in her closing submissions, Baroness Lawrence advanced her case in this way. She contends that "*special contact*" is a euphemism and that the more likely explanation is that the entry records a corrupt payment to John Ross. On Associated's pleaded case, Mr Ross was a former police officer who acted as a freelance journalist and occasionally provided tips (primarily relating to crime, showbusiness and equestrian stories) to Associated's journalists.

206. Associated contends that (i) Mr Wright's source for the settlement information was within the MPA, and (ii) the cash payment entry is not a safe foundation for an inference of corrupt payment for this story. Associated submits that the Article was lawfully sourced, relying on (i) a confidential source within the MPA for the settlement figure and related internal perspective, and (ii) earlier reporting of the fact of the claim and its broad contours.

207. As to the payment, Associated submits that the documentary evidence does not support the inference advanced. It emphasises the timing (approximately eight weeks after publication) and the express reference to "*Damilola/Lawrence*", and relies on Mr Wright's evidence describing it as "*quite a leap*" to treat the entry as a corrupt payment connected to this Article.

208. Associated also submits that the attempt to identify the "*special contact*" as Mr Ross is a late-emerging contention which was not pleaded as part of Baroness Lawrence's case on this Article, and which was first squarely advanced at trial in closing submissions. It submits that this matters both to fairness and to weight: had such a specific allegation been pursued, it could (and should) have been pleaded earlier.

209. Substantively, Associated submits that the documentary record does not support the proposition that the £200 cash entry records a payment to Mr Ross for this story. It relies, in particular, on the evidence that, where Mr Ross provided information, he was paid through the accounts system. On that footing, the £200 cash entry is said to be inconsistent with a "*Ross payment*" hypothesis, quite apart from the eight-week gap between publication and the cash entry.

210. Finally, Associated relied on a later Stephen Wright article, published on 6 December 2000 under the headline "*Lawrence widow: Damilola haunts us*", as being a more likely candidate for the £200 payment. In closing submissions, Associated submits that this

contemporaneous article – which concerned the Damilola Taylor case and Frances Lawrence (the widow of Philip Lawrence) – provides a more plausible explanation for the "*Damilola/Lawrence*" description in the £200 entry than Article (2).

211. In oral closing submissions, Baroness Lawrence objected to this point being taken so late in the trial. She argued (in summary) that Associated had not advanced this case during the trial and, particularly, that Mr Wright had not addressed this alternative hypothesis and had given no evidence about whether this later article was the explanation for the £200 payment.

212. I acknowledge that objection, and I bear it in mind when assessing weight. However, I am satisfied that it is proper to take the 6 December 2000 article into account as part of my assessment. The article is part of the evidential record and is a contemporaneous publication by Mr Wright. It is deployed not to advance a new allegation but to address the strength of an inference invited from the wording of the cash payment record. In those circumstances, the appropriate course is to consider it, while remaining mindful of the circumstances in which it was relied upon, that Mr Wright gave no evidence about it, and to evaluate what (if anything) it assists in showing.

(d) Discussion and conclusion

213. Baroness Lawrence's case on unlawful acquisition in relation to this Article depends substantially on the Court drawing an inference from the £200 cash payment record. The question is whether the evidence provides a sufficiently reliable foundation for concluding that this Article was obtained by unlawful means (and, specifically, that Mr Wright paid for confidential police-sourced negotiation/settlement information for this story).

214. I do not consider that it does. The payment was made approximately eight weeks after publication. That may not be determinative, but it requires the Court to be satisfied that there is nonetheless a cogent link between the payment and the acquisition of information for this Article.

215. The description used in the cash entry – "*Damilola/Lawrence case*" – does not naturally correspond to the subject matter of this Article, which concerns civil settlement negotiations in 2000 and has nothing to do with the Damilola Taylor murder. By contrast, the contemporaneous 6 December 2000 article "*Lawrence widow: Damilola haunts us*" directly concerned Damilola Taylor and a "*Lawrence*": not Baroness Lawrence, but Frances Lawrence, the widow of Philip Lawrence. On the face of the documents, the link between the description in the cash payment record and the subject matter of this later article is materially closer than any link to this Article.

216. I accept that this does not prove what the £200 payment was for. It does, however, materially reduce the probative force of the cash entry as support for the inference advanced by Baroness Lawrence in relation to this Article. At best, for Baroness Lawrence's case, the payment record is equivocal. In circumstances where Baroness Lawrence must establish a sufficient evidential foundation for the specific unlawful act alleged, equivocality is not enough.

217. I accept Mr Wright's evidence that the detail of the confidential settlement negotiations in the Article did not come from the police (as a result of any corrupt payment), but from

Mr Wright's confidential source in the MPA. The timing of the meeting broadly corroborates that such a source was likely to have had access to this confidential information.

218. I take into account that Baroness Lawrence and Mr Khan KC were not cross-examined about their evidence that the negotiation information was known only within a restricted circle and that Baroness Lawrence believed the Article to be a police leak. However, that evidence is not determinative of the issue I must decide. It supports the proposition that the information was obtained from within the policing/authority sphere, but it does not establish that it was obtained by an unlawful act commissioned by Associated rather than through Mr Wright's confidential source within the MPA.

219. Overall, the burden remains on Baroness Lawrence to establish her case that Mr Wright obtained the confidential information in the Article regarding settlement discussions by unlawful means; on her case as a result of a corrupt payment of £200 for the information. In my judgment Baroness Lawrence has not established, on the evidence, that the £200 payment is sufficiently linked to the sourcing of this Article to support the inference of UIG. On the contrary, it seems more likely that the £200 was connected to the 6 December 2000 article.

220. It follows that Baroness Lawrence has not proved that Article (2) was the product of UIG. The claim in respect of this Article therefore fails.

(3) "*The Godfather: Prince Harry on pram duty*": *Mail on Sunday* 2 September 2001 (Katie Nicholl)

221. This is the first Article relied upon by Prince Harry in his claim.

222. The Article was published in *The Mail on Sunday*, on 2 September 2001, under the headline "*The Godfather: Prince Harry on pram duty as he is about to become a godparent to the son of former nanny Tiggy Legge-Bourke*", bylined to Katie Nicholl.

223. The Article reported (in substance) that Ms Legge-Bourke intended to ask Prince Harry to be godfather to her newborn son, that she planned to seek Prince Charles's approval the following week, and that Prince Harry had visited and taken the baby out in a pram near her home.

(a) The issues

224. Prince Harry's pleaded case is that the Article misused his private information by publishing information said to be private, obtained through "Unlawful Acts" as generally defined in his Particulars of Claim.

225. However, in contrast to certain other Articles in Schedule B, Prince Harry advanced no specific case as to the mechanism by which the information was alleged to have been obtained unlawfully. The Defence complained that no particulars were given as to any unlawful act said to have been used to obtain the information.

226. At trial, Prince Harry alleged that the relevant information was obtained by Ms Nicholl through voicemail interception; an allegation put to Ms Nicholl in cross-examination, which she denied, and denied by Associated in its closing submissions.

227. The principal issue for determination, therefore, is whether Prince Harry has proved that the information in this Article which he relies upon was obtained by (or was the product of) UIG carried out or commissioned on Associated's behalf (and, in particular, through voicemail interception as alleged at trial).

228. If (and only if) unlawful acquisition were established, there would then arise the further questions whether the information relied upon engaged a reasonable expectation of privacy in the circumstances and, if so, whether publication was justified. Given the conclusion I reach on unlawful acquisition, it is unnecessary to decide those further questions for this Article.

(b) The evidence

229. The Article contains three elements of information that are material to Prince Harry's complaint: (i) the asserted intention to ask him to be a godfather; (ii) the asserted plan to seek Prince Charles's approval "*next week*"; and (iii) narrative and descriptive material about the visit and walk with the pram, including comment attributed to "*a family source*" and "*a royal insider*".

230. In his witness evidence, Prince Harry states that he does not remember reading the Article at the time, but recalls the substance of it. He says that the information about the intended godparent request, and the plan to seek Prince Charles's approval, would have been known only within a very close circle and that it was particularly intrusive that it was published before it had happened.

231. In addition to the Article itself, there was contemporaneous media reporting on the same day in other titles about Prince Harry visiting Ms Legge-Bourke and her baby and being seen pushing a pram near her home (including *The People* and *News of the World*), and a *Sunday Express* article describing the visit and walk.

232. Ms Nicholl's witness evidence is that she does not remember the Article particularly well and has been unable to locate any notes for it. She says she recalls being given photographs to write up by Paul Field, then her News Editor, and that Mr Field would often pass royal stories to her and had "*excellent royal contacts*". She referred to contemporaneous reporting (including an article in the *Sunday Express*) which also showed Prince Harry pushing a pram, and relied on that as indicating that the story/pictures were not exclusive. As to the exclusive element of her piece (the suggestion that Ms Legge-Bourke was about to ask Prince Harry to be godfather and would seek Prince Charles's approval the following week), Ms Nicholl said that she could not be "*100 percent sure*" who she spoke to, but she identified Lady Elizabeth Anson as a long-standing off-the-record contact who (she said) was a close friend of Ms Legge-Bourke and well-placed to provide "*reliable information and insight*"; and she said it was "*very probable*" that she would have run the story past Tara Palmer-Tomkinson, whom she described as another contact and good friend with excellent royal connections who often assisted her off the record with royal stories. Ms Nicholl explained that the only reason she was now willing to name those potential confidential sources was because both were now deceased.

233. Associated's pleaded position in the Defence was that the Article was written by Ms Nicholl; that no unlawful mechanism was alleged by Prince Harry; that the Article was based, in part, on what could be seen in photographs taken on a public street;

and that Ms Nicholl was unable to recall with certainty the source(s), but her best recollection is that the relevant information was obtained by Paul Field from a contact (or contacts) and passed to her to write up. Associated pleads that, because Mr Field is deceased and the events are now more than two decades old, it is unable to identify his source(s).

(c) The parties' submissions

234. Prince Harry submits, in essence, that the intended godparent request and the plan to seek Prince Charles's approval were private matters, known only within a close circle; that the Article pre-empted events; and that the appropriate inference is that the information was obtained through unlawful intrusion (as put at trial, by voicemail interception).

235. Associated submits that Prince Harry's case suffers from the absence of any pleaded particulars identifying an unlawful act used to obtain the information; that the Article is in part a write-up of photographs taken in public and/or public domain material; and that the Article's information was obtained from contacts and/or inference by legitimate means, including through Paul Field, with no evidential foundation for the allegation of voicemail interception.

(d) Discussion and conclusion

236. The burden is on Prince Harry to prove that the information he relies upon in this Article was obtained by unlawful means carried out or commissioned on Associated's behalf. The allegation, advanced at trial, was that it was obtained by voicemail interception.

237. I am not satisfied that this has been established. The pleaded case does not particularise any unlawful act used to obtain the information in this Article. The allegation of voicemail interception was first put to Ms Nicholl in cross-examination. If Prince Harry intended to allege, as an article-specific mechanism of UIG, that this information had been obtained by voicemail interception, that was a serious allegation which should have been clearly pleaded and supported by some proper evidential basis before it was advanced in cross-examination.

238. More importantly, the evidence available for this Article does not provide a sufficient foundation to conclude that voicemail interception (or any other unlawful act) occurred to obtain the relevant information. There is no documentary evidence for this Article pointing to or suggesting voicemail interception; Ms Nicholl has no notes for it and does not recall the sourcing beyond her recollection that the photographs and/or tip came via the News Editor, Mr Field.

239. The contemporaneous coverage in other titles on the same day can explain much of the narrative content of the Article (Prince Harry's visit, the walk with the pram, and the general circumstances) without the need to posit unlawful acquisition: those matters were being reported publicly at the time.

240. That leaves the more specific element: the asserted intention to ask Prince Harry to be a godfather and the asserted plan to seek Prince Charles's approval the following week. I accept that (if true) this was a more specific matter than the fact of a visit and a walk with a pram. The question, however, is not whether it was specific; it is whether Prince

Harry has proved that it was obtained by unlawful means (and, as advanced at trial, by voicemail interception).

241. Prince Harry's evidence is that only a very close circle would have known these matters and that the palace press office would not have known because Prince Charles had not yet been notified. That evidence is important, and I take it into account. But it does not, without more, establish that the information was obtained through voicemail interception, still less that it was obtained by (or as the product of) an unlawful act carried out or commissioned on Associated's behalf.

242. Nor is there, on the present evidential material for this Article, a cogent basis for drawing an inference of voicemail interception. The Article attributes the information to a "*family source*" and a "*royal insider*", and Associated's evidence (and pleaded position) is that the information was obtained through contacts and passed through Mr Field, who had excellent royal contacts. Ms Nicholl also described having royal and social contacts (including Lady Elizabeth Anson and Tara Palmer-Tomkinson), although she was unable to recall the specific sourcing for this Article.

243. In short, the evidential position is that the Article contains a mixture of (i) publicly observed/publicly reported material (the visit and pram walk) and (ii) a more specific assertion about an intended godparent request and intended approach to Prince Charles. Even if the latter was private in nature, Prince Harry has not established, on the evidence, that it was obtained by unlawful means (and in particular by voicemail interception) rather than by a source within the broad category of social/royal contacts relied upon by Associated and/or Mr Field.

244. It follows that Prince Harry has not proved that this Article was the product of UIG. On that basis, the claim in respect of this Article fails, and it is unnecessary to decide the further questions of reasonable expectation of privacy and justification for this Article.

(4) "*Mummy's little boy – But 'Daddy' is still in denial as Liz gives birth*": *Daily Mail* 5 April 2002 (Rebecca English & Nadia Cohen)

245. This is the first Article relied upon by Ms Hurley in her claim.

246. The Article was published on page 5 of the *Daily Mail*, on 5 April 2002 (with a teaser to the Article appearing on the front page of the print edition). It was headlined "*Mummy's little boy – But 'Daddy' is still in denial as Liz gives birth*" and bylined to Rebecca English and Nadia Cohen.

247. The Article reported (in substance) that Ms Hurley had given birth to a son, that she and the baby were "*happy and healthy*" according to her publicist, that she was believed to have had a caesarean section at the Portland Hospital, and that Mr Steve Bing (named as the father) refused to comment; it also included further detail about security concerns arising from an alleged stalker, the involvement of Ms Hurley's mother, and references to Hugh Grant.

(a) The issues

248. Ms Hurley's pleaded case is that the Article misused her private information by publishing private information (details concerning the birth of her baby, including confidential medical information, and information relating to her mother and her close friend Mr Grant) said to have been obtained generally through "Unlawful Acts" as pleaded in her Particulars of Claim. Specifically, Ms Hurley alleged that this Article was the "*direct product*" of information unlawfully obtained by Gavin Burrows.

249. At trial, Ms Hurley's case (in relation to this Article) was advanced differently. The allegation that Mr Burrows had obtained information unlawfully was abandoned. Instead, it was suggested that the relevant information was obtained through UIG by third parties instructed by the *Daily Mail* journalists, including an allegation that the information that Ms Hurley checked into the Portland Hospital under a false name was obtained by commissioning deception ("*blagging*") or similar unlawful methods. Specifically, it was initially put to Ms English, in cross-examination, that information in the Article, provided by Ms Cohen, had been obtained "*from voicemail interception*". After an objection from Associated, the suggestion that Ms Cohen intercepted voicemails was withdrawn. No direct allegation of UIG was ultimately put to Ms English.

250. Associated denies that any UIG was used to obtain the information in this Article. Its pleaded case is that the Article was compiled from legitimate sources including agency copy (in particular Press Association reporting), previously published reports, and information supplied by reporters/photographers on the ground and/or sources within Ms Hurley's circle who were in a position to provide information legitimately.

251. The principal issue for determination, therefore, is whether Ms Hurley has proved that the relevant information in this Article on which she relies was obtained by (or as the product of) UIG carried out or commissioned on Associated's behalf.

(b) The evidence

252. The Article includes medical and related detail about the birth (including the reported mode of delivery and the hospital), together with material about the security context (including reference to an alleged stalker), and information about Ms Hurley's mother and her relationship with Mr Grant.

253. The Article includes the statement that Ms Hurley was believed to have checked in under a false name because of fears for her safety following threats by a stalker. It also includes a quote attributed to her spokeswoman as to the time of birth and the condition of mother and baby, and it reports Mr Bing's refusal to comment when approached outside his Los Angeles home.

254. The Press Association report, dated 5 April 2002, states that Ms Hurley was expected to spend the next few days recovering in hospital after giving birth to her baby son Damian by caesarean section; that she was understood to have had the operation at the private Portland Hospital in central London; and that her spokeswoman said both mother and baby were "*happy and healthy*" and that Ms Hurley was "*delighted*". It contains substantial detail about the Portland Hospital and its security measures; refers to Ms Hurley having been worried by the attentions of an alleged stalker;

and reports that a man accused of stalking her was arrested outside her home hours after the birth and appeared at West London Magistrates' Court. It also reports Mr Bing's refusal to comment and summarises the prior public exchange between him and Ms Hurley about paternity and their relationship.

255. Several details about Mr Grant which appear in the Article are also found in earlier contemporaneous reporting in late 2001. The following are examples:

(1) a *Daily Mail* article, of 9 November 2001, which reported that Ms Hurley attended a pre-natal check-up and scan accompanied by Mr Grant, and also reported that Mr Grant let himself into her flat "*with his own keys*";

(2) a *Daily Mail* article, of 15 November 2001, which reported that Mr Grant accompanied Ms Hurley when she had her first pregnancy scan, "*holding her hand*" during much of the time; and

(3) a *Daily Mail* article, of 16 November 2001, which again reported that Mr Grant had his "*own key*" to Ms Hurley's home and that he supported her at a pregnancy scan.

256. The same general theme appears in other reporting relied upon by Associated, including reports describing Mr Grant accompanying Ms Hurley to a hospital ultrasound scan and referring to his use of the Chelsea home as a "*home-from-home*". There is also reporting (including in the *Sunday Telegraph*) describing Mr Grant as "*camping out*" at Ms Hurley's house and "*driving her to the hospital and holding her hand*" in baby clinics. Further reporting (for example, in *Hello!*) similarly describes Mr Grant being present for a pre-natal scan and refers to him living at Ms Hurley's London house while his flat was redecorated.

257. In her witness statement, Ms Hurley describes the stalker episode as a frightening ordeal. She says she spoke about it with her mother and with Mr Grant, and she identifies as intrusive a number of details in this Article (including the statement that she checked in under a false name, matters about nursery purchases, and the detail about Mr Grant having keys to her home).

258. In her oral evidence, Ms Hurley explained that at the time she understood many of the press reports to be "*true*" (and therefore not libellous) and she associated that with her belief that information was being obtained by people "*listening*" to her.

259. Although there are no episode specific TPI documents relied upon in relation to this Article, Ms Hurley relied on the general use of TPIs by Ms English and Ms Cohen as part of her broader propensity case. However, this is to overlook the fact that Ms Hurley's original case was a narrow one; an allegation that Mr Burrows had obtained information by UIG.

260. Ms English's evidence is that she does not remember this story at all. In her witness statement she explains that at the relevant time she was a general news reporter, with no "*showbiz*" contacts, and that she was most likely asked to write up the piece on the day from what was on the news wires and in other newspapers; she says that Ms Cohen, as a showbusiness reporter, may have contributed information from her own contacts,

but that (given the passage of time) she cannot recall what, if anything, Ms Cohen provided.

261. In cross-examination, Ms English accepted that a number of the more specific details in the Article (including the statement that Ms Hurley was believed to have checked into the Portland under a false name, the reference to Ms Hurley's mother leaving home several days earlier, the asserted expenditure on nursery items, and the statement that Mr Grant was expected to return sooner) are not contained in the Press Association report relied upon, and she was unable to identify the source of those details. She said that her role was to pull together what she was given into a readable story and that she did not take steps herself to verify such details; she could not recall any discussion with Ms Cohen about their provenance; and she said that, as between colleagues, she would ordinarily have assumed that information supplied by a showbusiness specialist colleague was accurate. She also said that she did not have any showbusiness contacts of her own and, ultimately, that the specific information of this kind probably came from Ms Cohen; and she suggested (for the first time in her oral evidence) that reporters other than Ms Cohen may have worked on the story.

(c) The parties' submissions

262. Ms Hurley submits that the Article contained private (including medical) information relating to the circumstances of her child's birth and associated matters (including the alleged false name used on admission), and that the Court should infer that such information was obtained through UIG by private investigators or other intermediaries commissioned by Associated's journalists. She emphasises that the central wrong is the intrusion by unlawful means, and that the mere fact that some information was also reported elsewhere does not preclude unlawful acquisition. In support of that inference, Ms Hurley also relies (in closing) on the commissioning by Ms Cohen of TDI/ELI and on propensity material concerning the journalists involved.

263. In closing, Ms Hurley referred to the fact that Ms Cohen was not giving evidence in support of her submission that the more specific information in the Article was obtained unlawfully (and provided to Ms English), alongside her reliance on propensity material.

264. Associated submits that Ms Hurley has not proved that any UIG occurred in relation to this Article. It relies upon the Press Association reporting concerning the birth and on earlier published articles about Mr Grant's involvement (including the pre-natal scan and the fact he had keys) as showing that substantial parts of the narrative were already in the public domain or derived from legitimate sources. Associated also submits that several of the "*specific*" details relied upon by Ms Hurley (including as to nursery spending and aspects of Mr Grant's position) were the subject of contemporaneous reporting, and that it is inherently credible that on-the-ground reporting could have explained the "*false name*" line in the circumstances of this widely covered event.

(d) Discussion and conclusion

265. The burden is on Ms Hurley to prove that the relevant information in this Article on which she relies was obtained by unlawful means carried out or commissioned on Associated's behalf.

266. I am not satisfied that Ms Hurley has discharged that burden in respect of this Article.

267. First, the Press Association report, dated 5 April 2002, contains the core reported facts about the birth (including the reported caesarean, the hospital, the quote attributed to Ms Hurley's spokeswoman that mother and baby were "*happy and healthy*", and the "*delighted*" description), together with substantial additional contextual detail (including the security context and the reported arrest/appearance of the alleged stalker, and Mr Bing's refusal to comment). That is a cogent and straightforward alternative explanation for how a large part of the Article could have been written without any UIG directed at Ms Hurley.

268. Second, many details about Mr Grant and his involvement were already the subject of earlier contemporaneous reporting in late 2001, including reporting (in the *Daily Mail* itself) that he accompanied Ms Hurley to a pre-natal scan and that he had his "*own keys*" to her home. Those matters therefore do not, on their face, compel the inference of unlawful acquisition in April 2002.

269. That leaves (as a potential focus for Ms Hurley's case on unlawful acquisition) the element said to be "*exclusive*" or particularly sensitive: the statement that Ms Hurley was believed to have checked into the Portland Hospital under a false name, and certain other "*colour*" details (such as spending on nursery items). Associated disputes the "*exclusivity*" of some of those "*colour*" details and relies on contemporaneous reporting, together with the circumstances of intensive press presence, as an alternative explanation; but the question remains whether Ms Hurley has proved unlawful acquisition on the balance of probabilities.

270. I accept that (if true) the use of a false name on admission to hospital would be a private matter. But the question I must decide is not whether it was private; it is whether Ms Hurley has proved that it was obtained through UIG by or on behalf of Associated.

271. On the material before me, that is not established. Ms Hurley has abandoned her original case that information was obtained unlawfully by Mr Burrows. There is no documentary evidence for this Article identifying any TPI instruction, any deception-based enquiry, or any other unlawful mechanism by which the "*false name*" information (or the other complained of details) was obtained; and a substantial part of the Article's narrative is readily explicable by reference to the Press Association copy and earlier reporting.

272. Nor is there anything in the Article itself which compels an inference of unlawful acquisition, as distinct from information passing (lawfully) through typical media channels at the time: an agency report attributed to a publicist/spokeswoman, on the ground reporting, and attribution to unnamed sources described in general terms, which is not, without more, probative of unlawful methods.

273. I do not overlook Ms Hurley's evidence that the details felt intrusive and that she could not understand how the newspaper knew them. That evidence is important and I take it into account. But it does not, without more, permit me to conclude (still less to find proved) that UIG occurred in relation to this Article. Although Ms Hurley's pleaded case included an allegation that this Article was a "*direct product*" of information unlawfully obtained by Mr Burrows, the episode specific case advanced at trial focused instead on the contention that the "*false name*" information (and related particulars) had been obtained by deception ("*blagging*") or other unlawful methods, in particular via Ms Cohen.

274. The specific suggestion of voicemail interception, advanced in cross-examination in relation to Ms Cohen, was not part of any clearly articulated pleaded case, was withdrawn after objection, and had no sufficient evidential foundation. In those circumstances, I do not regard that late and unsupported suggestion as providing any proper basis for a finding of UIG in relation to this Article.

275. For these reasons, I am not satisfied that this Article was obtained by, or was the product of, UIG carried out or commissioned on Associated's behalf. It follows that Ms Hurley does not establish liability in respect of this Article, and it is unnecessary to determine the further questions of reasonable expectation of privacy and justification for this Article.

(5) *"Elton takes his boughs"*: *Daily Mail* 13 June 2002 (Nigel Dempster)

276. This is the first Article relied upon by Sir Elton and Mr Furnish in their claim and the second Article relied upon by Ms Hurley in her claim. In this section of the judgment, I shall refer to them as "the Claimants".

277. The Article complained of appeared in the *Daily Mail*, on 13 June 2002, in the "*Nigel Dempster*" diary column under the headline "*Elton takes his boughs*". Mr Dempster died in 2007.

278. The Article states that Ms Hurley gave Sir Elton John an "*evergreen thank-you gift*" for letting her stay at his Windsor home after the birth of her son, Damian; that she "*splashed out £750 on three trees*" (two cherry trees and a tulip tree); and it includes detail about her reasons for staying at Windsor, her wish to "*bond*" with her son, and media interest in exclusive photographs.

279. The Article further states that Sir Elton was in Atlanta during her stay and that Mr Furnish stayed at their Holland Park residence so that she could have "*the run of the place*". It also refers to anticipated travel for an Estée Lauder promotional tour and includes additional description of the tulip tree.

(a) The issues

280. The pleaded allegation in relation to this Article is that the relevant information was obtained by Mr Burrows through (i) a hardwire tap on Ms Hurley's landline and (ii) voicemail interception of the Claimants' gardener.

281. In support of the pleaded allegation, the Claimants relied on two documents purportedly signed by Mr Burrows: a witness statement, dated 16 August 2021 and an earlier schedule of comments on a number of Articles, dated 29 March 2021. Those materials were initially relied upon as hearsay evidence from Mr Burrows. During the trial, however, the Claimants elected to call Mr Burrows to give oral evidence. As explained in the judgment of 12 March 2026 (Appendix 1, Section (8)), a consequence of that decision was that the hearsay statements attributed to Mr Burrows could not be relied upon as proof of the underlying facts unless, and to the extent that, Mr Burrows adopted their contents in his oral evidence.

282. Nigel Dempster is deceased and Associated's pleaded case is that, given the passage of time and the nature of the diary column, it is not able to identify who wrote the item.

283. The principal issue for determination is whether the Claimants have proved, on the balance of probabilities, that the relevant information in the Article was obtained by unlawful means carried out or commissioned on Associated's behalf.

(b) The evidence

284. There was press reporting, in April 2002, that Ms Hurley had left hospital with her baby and gone to stay at Sir Elton's Windsor home, together with reporting as to Sir Elton being in Atlanta and Mr Furnish being elsewhere to "*give her some space*".

285. The evidence of Ulla Kloster (a member of the Diary team at the material time) is summarised in Appendix 2 (see [A2.451]-[A2.456]). In brief, she described the Diary's ordinary working practices (networking/contacts and the use of library cuttings, often producing a 'cuttings job' with any additional detail obtained by ordinary journalistic means). She did not write the item, had no recollection of how it was sourced, and denied any use by her (or, to her knowledge, by the Diary team) of enquiry agents or phone interception.

286. Mr Furnish's evidence addresses the impact of this Article and his recollection that the published detail about the trees (including the specific types) was accurate and felt private. He recalls that the gift was meant to be a surprise; that Ms Hurley was upset when it appeared; and that, at the time, there was a sense that someone in the gardening "*supply chain*" must have leaked the information. He further recalls that Ms Hurley had direct discussions with their gardeners about the choice of trees. In addition, Mr Furnish's evidence (including in relation to the Claimants' "*watershed moment*") emphasises that communications within their household and with close friends at the relevant period were commonly conducted by telephone/landline: he says that the whistleblower (Mr Burrows) knew (correctly) that Sir Elton did not have his own mobile phone and used several landlines (including private, withheld lines), and he recalls Ms Hurley having intense conversations with Mr Bing from the Windsor home landline.

287. In cross-examination, Mr Furnish was taken to the passage of his statement in which he describes those Windsor landline calls and confirmed that he remembered them "*very vividly*". More generally, he also rejected the suggestion that he would have been "*chatting openly*" with journalists about private matters, emphasising that he was guarded and that any information he did provide about Ms Hurley at the time was done with her permission.

288. Ms Hurley also gives evidence relevant to this Article, which was not challenged in cross-examination. She describes the security and refuge provided to her and her new son at the Windsor home, and explains that the gift was important to her and that she "*went to great lengths*" about it. She states that she had long conversations with Sir Elton's gardener about what to buy and what types of trees Sir Elton and Mr Furnish wanted or needed in the garden, and that those conversations were "*on the telephone*". More generally, she says that Articles from this period (particularly while she was staying with the Claimants) contained details which, she contends, could only have come from private conversations and heated telephone calls known to a very small number of people; and she states that she spoke to Mr Bing from the landline telephone at Windsor several times during her stay.

289. In his witness statement, Paul Henderson denies that he instructed Mr Burrows to target Sir Elton or Mr Furnish, or to landline tap their Windsor home, or to target Sir Elton's PA or other employees.

290. The allegation was put to Mr Henderson in cross-examination in the form that, on his instruction, Mr Burrows undertook a hardwire tap and obtained information from Sir Elton's gardener. Mr Henderson denied this. Although Associated submits that the allegation was not put 'squarely' in commissioning terms, the substance of the pleaded mechanism was put to Mr Henderson, who rejected it.

291. Mr Burrows gave oral evidence at trial. I deal separately with my assessment of his evidence (see Appendix 3). In relation to this Article, he denied having made the relevant "*admissions*", disputed the provenance and reliability of the earlier hearsay material relied upon by the Claimants, and denied having worked for Associated Newspapers.

(c) The parties' submissions

292. The Claimants submit that the "*trees*" detail (including the precise types of trees and their cost), and the associated information in the Article about the Windsor stay and arrangements during that period, were obtained through UIG commissioned by Associated (through Mr Henderson), in particular by the pleaded allegations concerning Mr Burrows (hardwire tapping and voicemail interception).

293. Associated submits that the relevant information was obtained by legitimate means: that the Windsor "*sanctuary*" narrative and the Claimants' whereabouts during Ms Hurley's stay had already been widely reported; and that the "*trees*" detail is inherently capable of explanation by a lawful source (for example, an associate, staff member, or someone involved in purchase/transport/installation), consistent with ordinary diary practices described by Ms Kloster.

294. Associated further argues that the Claimants' "*Burrows*" case in respect of this Article should be rejected for the reasons advanced in its submissions on Mr Burrows generally; and it relies on the absence of cogent, episode-specific proof of the alleged unlawful mechanism for this diary item.

(d) Discussion and conclusion

295. The burden is on the Claimants to prove that the relevant information in this Article, on which they rely, was obtained by unlawful means carried out or commissioned on Associated's behalf.

296. A substantial part of the Article's narrative (that Ms Hurley was staying at Sir Elton's Windsor home, and that Sir Elton was away and Mr Furnish was elsewhere) is readily explicable by reference to prior reporting in April 2002.

297. The principal focus of the Claimants' case on unlawful acquisition is therefore the "*trees*" detail: that Ms Hurley bought two cherry trees and a tulip tree for £750 as a thank-you gift, and the accompanying specificity about the types of trees.

298. The issue I must decide, however, is not whether it was private in that sense; it is whether the Claimants have proved that it was obtained through UIG by or on behalf of Associated. The Claimants' case on mechanism depends centrally on the proposition that Mr Burrows (commissioned by Mr Henderson) carried out hardwire tapping and voicemail interception which produced the relevant information for this diary item.

299. When he gave evidence, Mr Burrows did not provide any support for the claim in relation to this Article. On the contrary, he denied previous statements attributed to him and denied working for Associated.

300. The allegation of commissioning Mr Burrows in relation to this Article was put to Mr Henderson and was denied; and Mr Henderson's evidence is a denial of any such instruction or commissioning. My assessment of Mr Henderson is that he was a truthful witness (see [A2.195]-[A2.208]) I accept Mr Henderson's evidence on this point.

301. There is no episode-specific documentary trail (such as a contemporaneous instruction, payment record, or other record referable to this diary item) evidencing the alleged commissioning of unlawful activity in relation to this Article.

302. Against that background, the combination of (i) extensive prior reporting about the Windsor stay and the Claimants' whereabouts, and (ii) the ordinary operation of a diary column (cuttings plus mundane "*new*" detail) described by Ms Kloster, provides a plausible lawful route by which such an item could have been produced. The "*trees*" detail, even if the most specific part of the item, is also inherently capable of being known by (and passed on by) individuals through ordinary channels, including those involved in purchase, delivery and planting, or staff/associates within the Claimants' or Ms Hurley's circles.

303. I do not underestimate the Claimants' evidence as to how the publication felt at the time, nor the evidence that the detail was accurate. But accuracy, distress and suspicion are not, without more, sufficient to discharge the burden of proving unlawful acquisition in relation to this Article, particularly where Mr Burrows' alleged "*admissions*" were not adopted by him in oral evidence, and I have been unable to place any reliance on his evidence.

304. Taking the evidence as a whole, I am not satisfied that the Claimants have proved that the information in this diary item was obtained by UIG carried out or commissioned on Associated's behalf.

305. The claim in relation to Article (5) therefore fails.

(6) *"Bing IS the father; Paternity case defeat for Liz's ex as DNA proves Damian is his"*: *Daily Mail* 20 June 2002 (Victoria Newton)

306. This is the third Article relied upon by Ms Hurley in her claim.

307. The Article was published in the *Daily Mail*, on 20 June 2002, under the byline of Victoria Newton. It reported the outcome of DNA testing establishing that Steve Bing was the biological father of Ms Hurley's infant son, and included narrative comment and attributed quotations about Ms Hurley's reaction and intentions.

(a) The issues

308. Ms Hurley contends that the Article misused her private information because the information it contained included "*details relating to [her] paternity dispute, including her thoughts and legally privileged information*".

309. The pleaded case for this Article does not identify any specific unlawful information-gathering act by which the relevant information was obtained. Instead, Ms Hurley advances an inference-based case. She invites the Court to infer that Ms Newton commissioned TDI/ELI (or otherwise used their services) and that the Article contained the fruits of that activity.

310. The principal issue for determination is whether Ms Hurley has proved that Associated obtained and used the relevant information through unlawful means.

(b) The evidence

311. The Article reports the DNA result, refers to a hearing in the Family Division of the High Court, reproduces a statement from a publicist confirming paternity, and includes passages attributed to "*close friends*"/"*a friend*" describing Ms Hurley as "*feeling jubilant*", stating that she "*never wanted*" matters played out in court, that there "*was never any doubt*" in her mind, and that she regarded Mr Bing's comments as intended to smear her reputation.

312. Ms Newton did not give evidence at trial and provided no witness statement. There is therefore no direct evidence from the author addressing sourcing for the Article.

313. Ms Hurley addressed this Article in her second witness statement. In summary, she says she was "*celebrating*" but found the episode degrading and humiliating; she objects to the suggestion she had "*tricked*" Mr Bing for money; she recalls discussing "*a lot of the information*" in the Article with her then solicitor; she says she also spoke to close friends and family about what was happening; and she states that she did not speak publicly and wanted the matter to be over. She also says that Ms Newton's name has appeared "*again and again*" in documents revealed through legal action and asserts that Ms Newton was "*setting private investigators*" on her in 2001-2002.

314. A substantial body of contemporaneous reporting is also in evidence. This includes:

(1) the *News of the World* report (16 June 2002) referring to a friend stating "*It's her reputation and that of her child she's trying to salvage*", and reporting Mr Bing's alleged visit to London to give a DNA sample and his legal steps to ensure testing proceeded;

(2) a *Daily Express* report (17 June 2002) reporting on the dispute and impending DNA test;

(3) an *Evening Standard* report (20 June 2002) reproducing the publicist statement and describing events surrounding the confirmation; and

(4) a *Daily Telegraph* report (21 June 2002) concerning the dispute and reporting (among other matters) a further account from within Mr Bing's circle.

315. The feature, "*Modern Paternity*", published by *Vanity Fair*, includes narrative about the dispute and contains an account that Ms Hurley telephoned Mr Bing from Sir Elton John's country house in Windsor shortly after the birth, and refers to the publicity surrounding the paternity dispute and DNA testing. Although the *Vanity Fair* article bears a date of August 2002, it was being referred to in publications dated 20-21 June 2002, including the *Daily Telegraph* report of 21 June 2002.

316. In support of a "*propensity/inference*" case, Ms Hurley relies on ledger entries showing payments to ELI described as "*NEWTON ENQUS*" and "*NEWTON RESEARCH*" in October-November 2002. The spreadsheet entries do not, on their face, identify any target, or connect the entries to this June 2002 Article, and they substantially post-date the date of publication.

317. In her Particulars of Claim, Ms Hurley relied on two TDI invoices from other proceedings, said to be:

(1) dated 22 October 2001, addressed to Ms Newton, referencing Ms Hurley's spokeswoman, Karin Smith, as the target and bearing the annotation "*re Liz Hurley pregnant*"; and

(2) dated 3 April 2002 (the date on which Ms Hurley was admitted to the Portland Hospital for her son's birth), naming Ms Hurley as the target of the enquiries.

(c) The parties' submissions

318. Ms Hurley's case, in summary, is that: (i) the Article disclosed private information about an intensely personal dispute, and included her "*thoughts*" and legally privileged information; (ii) she did not speak publicly and did not wish the matter aired in the press; (iii) she had discussed matters with her solicitor and close confidants; and (iv) the Court should infer that Ms Newton, as a journalist said to have used private investigators (TDI/ELI), obtained and used unlawfully gathered information, including by commissioning TDI/ELI.

319. Associated's case, in summary, is that: (i) it is admitted that the Article was published and that it contained information about the paternity dispute, including Ms Hurley's "*thoughts*", but it is denied that the Article contained legally privileged information; (ii) the pleaded case identifies no specific unlawful act by which the information is said to have been obtained for this Article, and the Claimant has not identified precisely what in the Article is said to be private or privileged; (iii) given the passage of time, Associated cannot now identify the sourcing, but contends the information was sourced from extensive prior reporting and from source(s) who could legitimately provide such information; (iv) the paternity dispute had been widely reported and the specific themes said to be "*exclusive*" had already appeared in other reporting; and (v) in those circumstances the information was not private (or was anodyne) and Ms Hurley did not have a reasonable expectation of privacy.

(d) Discussion and conclusion

320. A feature that distinguishes this Article from a number of the Articles is that there is no article specific documentary material (such as an invoice, commissioning email, note, or other record) linking any TPI instruction to this June 2002 story. There is no direct

evidence from the bylined author, Ms Newton, about its sourcing. The Claimant's case therefore depends on inference.

321. In appropriate circumstances the Court may infer unlawful acquisition from the nature of what is published and the surrounding evidential context. But the inference must be grounded in evidence sufficiently probative of unlawful acquisition of the relevant information for this Article, rather than a generalised possibility that unlawful methods may have been used. There is not a proper basis upon which to draw an inference that Ms Newton commissioned any TPI for this Article.

322. Ms Hurley invites the Court to draw an adverse inference from Ms Newton's absence. In the circumstances of this case, and applying the approach I have set out (see [57]-[60] above), I do not consider it appropriate to do so. The Article was published almost 24 years ago, and it is inherently speculative to assume that Ms Newton would now have a sufficiently clear recollection of the particular steps by which the information for this Article was obtained, still less to treat her non-attendance as probative of unlawful acquisition. As I shall explain, the documentary record in relation to this Article does not raise a case to answer that calls for an answer from Ms Newton: there is no article-specific material linking any unlawful information-gathering activity to the preparation of the story, and the Claimant's case depends on inference from an alleged propensity to use TPIs. At most, as the bylined author, Ms Newton might have been able to assist with sourcing in general terms; but given the passage of time, and the absence of any sufficiently probative foundation pointing to unlawful acquisition of information for this Article, it would be wrong to treat her absence as providing more than speculation. Further, Ms Newton is no longer employed by Associated (and Associated submitted that she works for a rival publisher), which is part of the practical context when assessing whether it is reasonable to expect her to have been called. In short, her absence does not justify drawing the adverse inference invited, and it cannot be used to supply a missing evidential link.

323. It follows that the absence of evidence from Ms Newton does not advance Ms Hurley's case on unlawful acquisition. The question remains whether, on the evidence that is available, there is a sufficiently probative evidential foundation to justify the inference contended for. I therefore turn to the contemporaneous reporting and to the extent to which the matters said to be "*exclusive*" in the Article were already in circulation at the time of publication.

324. The contemporaneous reporting materially weakens the premise that the Article contained "*exclusive*" or closely held information such that its presence would, of itself, support an inference of unlawful acquisition. In particular:

(1) the *News of the World* article, of 16 June 2002, reported (attributed to "*a friend*") that Ms Hurley's concern was to vindicate her reputation ("*It's her reputation and that of her child she's trying to salvage*"), and it also reported (a) the possibility of proceedings in California if Mr Bing did not co-operate and (b) an account of Mr Bing's travel to London to provide a DNA sample and his return to Los Angeles;

(2) the *Evening Standard* report, of 20 June 2002, reproduced the publicist statement confirming the DNA result and reported immediate reactions and events around the confirmation; and

(3) the *Daily Telegraph* report, of 21 June 2002 (which included reference to the *Vanity Fair* account of the dispute), demonstrates that narrative accounts of the parties' positions and reactions were circulating widely at the time, and were being repeated in several publications.

325. Against that background, the aspects of the *Daily Mail* Article relied on as "*exclusive*" in the statements of case (for example, the portrayal of Ms Hurley's state of mind, her wish not to have matters aired in court, and her perception that she was being smeared) do not have the character of information which, on its face, could only have been obtained by unlawful intrusion. They are consistent (and overlap) with the themes and attributions ("*friend*", "*source close to…*") already present in the contemporaneous reporting.

326. I also take into account that the pleaded allegation of "*legally privileged information*" is not particularised in a way that enables the Court to identify what, specifically, is said to be privileged within the Article. Associated's pleaded response is that it is denied that any legally privileged information was contained in the Article, and that the Claimant has not identified precisely what is said to be private or privileged. In the absence of particularisation and evidence, I am not persuaded that the Article is proved to have disclosed legally privileged communications.

327. Ms Hurley's evidence makes clear why she experienced the coverage as humiliating and degrading, and she recalls discussing matters with her solicitor and with close confidants. That evidence supports the proposition that she would have regarded aspects of the dispute as private and painful. However, it cannot supply an article-specific basis for concluding that Associated obtained the information in this Article through unlawful means.

328. The remaining building block for the inference case is the reliance placed on "*propensity*" material concerning Ms Newton's alleged use of TDI/ELI. In the pleadings, Ms Hurley advances a case that Ms Newton used private investigators including TDI while at *The Sun* and invites an inference of continued use after she joined the *Daily Mail*. In support of that, she relies on the fact that ledger entries show commissions described as "*NEWTON ENQUS/RESEARCH*" in October-November 2002.

329. I accept that the existence of later "*NEWTON ENQUS/RESEARCH*" ledger entries is capable of showing that Ms Newton was linked to enquiries in late 2002. Whilst that might provide broad support for the contention that she continued to use TDI/ELI after leaving *The Sun*, the entries substantially post-date the publication of this June 2002 Article and, on their face, they do not identify the subject matter, the target, or any unlawful method, still less any nexus with this particular Article. I therefore treat them as having only very limited probative value on the question I must decide here: whether unlawful means were used to obtain the information published in this June 2002 Article.

330. Insofar as Ms Hurley relied upon the alleged instruction of TDI by Ms Newton while she was working at *The Sun*, and despite identifying those invoices in her pleading, she did not disclose or provide copies of the invoices in these proceedings. It is therefore not possible to investigate and draw any conclusions as to whether they demonstrate a propensity for unlawful information-gathering by Ms Newton.

331. Bringing those strands together, I am not satisfied that Ms Hurley has proved (on the balance of probabilities) that the relevant information in this Article was obtained by Associated through UIG. The evidence points away from that conclusion. Much of the material was already widely reported (including through articles explicitly attributed to friends/sources), and there is no article-specific documentary support for the alleged commissioning of TDI/ELI in relation to this publication.

(7) *"So what now for Baby Bing?"*: *Daily Mail* 21 June 2002 (Victoria Newton)

332. This is the second Article relied upon by Sir Elton and Mr Furnish in their claim and the fourth Article relied upon by Ms Hurley in her claim. In this section of the judgment, I shall refer to them as "the Claimants".

333. The Article was published in the *Daily Mail*, on 21 June 2002, under the byline of Victoria Newton. The Article followed immediately upon the confirmation of Mr Bing's paternity and continued the press coverage of the paternity dispute. It contains (i) an account of a telephone conversation between Ms Hurley and Mr Bing said to have taken place while she was staying at Sir Elton and Mr Furnish's home, and (ii) material attributed to those in her "*inner circle*" about her wishes and intentions in relation to financial arrangements and further litigation.

(a) The issues

334. The pleaded claim of the Claimants is that this Article was the "*direct product of information unlawfully or illegally obtained by Mr Burrows*". The claim advanced by Sir Elton and Mr Furnish is very much premised on the method of UIG being the tapping of the landline at their Windsor home alleged to have been carried out by Mr Burrows. Ms Hurley's claim is wider. Her pleaded case also relies additionally on alleged instructions of Capitol Inquiry, Mr Whittamore, and a cash payment to a third party of £1,000. No evidence has been adduced by Ms Hurley to support the allegation that any information in the article was "*legally privileged*", and that part of her case was not pursued at the trial.

335. The principal issue is whether the Claimants proved that the information in this Article on which they rely was obtained by (or as the product of) UIG carried out or commissioned on Associated's behalf.

336. If (and only if) unlawful acquisition were established, there would then arise the further questions whether the information relied upon engaged a reasonable expectation of privacy in the circumstances, and, if so, whether publication was nevertheless justified. For the reasons set out below, my conclusion on unlawful acquisition makes it unnecessary to reach those further questions for this Article.

(b) The evidence

337. The Article contains an account of a telephone call between Ms Hurley and Mr Bing, including (as reported) that Mr Bing questioned the naming of Damian, and that the call ended in an argument when he suggested speaking to the media to improve his image. It also reports, by reference to the *Vanity Fair* article (see [315] above), that Mr Bing travelled to London and took the paternity test, and it includes (attributed to those in

Ms Hurley's "*inner circle*") assertions about her wish to avoid litigation over money and her preference for matters to be resolved privately.

338. The contemporaneous media reporting is of central importance. The telephone call narrative, and the reported details of the discussion, were published in the *Vanity Fair* article (to which the Article expressly refers) and were being reported and repeated in other publications around the same time. The defence case for this Article is that the relevant material was overwhelmingly likely to have been taken from the *Vanity Fair* article and other reporting, and/or from sources who could legitimately provide such information. The Article also attributes a quotation to Mr Bing's publicist.

339. Ms Hurley addresses this Article in her second witness statement. She says that she did speak to Mr Bing from the "*house lines*" at Sir Elton and Mr Furnish's home when she was staying there shortly after Damian's birth, that she spoke to him several times, and that those conversations tended to end in argument. She describes the publication of such private matters as humiliating and intrusive.

340. The issue was explored in Ms Hurley's oral evidence. In cross-examination she rejected the suggestion that she would have discussed the content of such a call with a group of friends, and she resisted the proposition that the content could have come from benign sourcing via her "*friends*", contending (in substance) that it must have been obtained by unlawful intrusion.

341. Mr Furnish's trial witness statement records that he remembered Ms Hurley having intense conversations with Mr Bing from the Windsor landline and that she told him (in confidence) that Mr Bing had said Damian was "*named 'after the devil'*"; and that they could not understand how that detail had become public.

342. Ms Newton did not give evidence and provided no witness statement. The Article-specific case therefore depends upon what can properly be inferred from the content of the publication and the surrounding contemporaneous record.

343. Mr Burrows evidence at trial provided no support for the Claimants' original claim that the information in the article was obtained by him by UIG. This Article was not put to Mr Henderson when he was cross-examined.

(c) The parties' submissions

344. The Claimants' submissions focus on the fact that the Article reported a private telephone conversation said to have taken place in a place of refuge (Sir Elton and Mr Furnish's home) and included personal detail about her reaction and intentions. It is submitted that such material was inherently private and that the Court should infer UIG as the route by which it was obtained. The Claimants also submit that the Court should draw an adverse inference from Ms Newton's absence as the bylined journalist, on the footing that she has key evidence to give about sourcing.

345. Associated submits that there is no Article-specific evidential foundation for a finding of unlawful acquisition. It relies on the contemporaneous publication and circulation of the relevant narrative in *Vanity Fair* and in follow-on reporting, and submits that the material was therefore in the public domain (or in circulation within the media) by the time of publication. It further submits that, to the extent any detail was not taken from

prior reporting, it was obtained from sources who could reasonably be expected to provide such information legitimately.

346. Associated also relies on the absence of Article-specific documents pointing to unlawful activity (no instruction, invoice, payment record or equivalent linkage), and submits that it would be impermissible to treat the absence of evidence from Ms Newton as supplying a missing evidential link, particularly given the age of the events.

(d) Discussion and conclusion

347. The burden is on the Claimants to prove that the information in this Article on which they rely was obtained by unlawful means carried out or commissioned on Associated's behalf. There is no Article-specific documentary trail evidencing unlawful acquisition in relation to this Article. The case therefore rests on inference.

348. In principle, inference can be drawn in an appropriate case. But it must be grounded in evidence sufficiently probative of unlawful acquisition of the relevant information for this Article, rather than in a generalised sense that the information requires an unlawful explanation. The requirement to avoid speculation and to keep the inferential chain properly supported by evidence is a recurring theme addressed earlier in this judgment.

349. Here, the contemporaneous reporting substantially weakens the foundation for the inference invited. The telephone call narrative (including the "*Damian*/*The Omen*" detail) and related account of the dispute were contained in the *Vanity Fair* article and were being repeated in other publications around the relevant time. In those circumstances, the presence of those details in the Article does not, without more, support an inference that it must have been obtained by unlawful means, as distinct from being taken from already-circulating material (or derived from the same category of sources that spoke to *Vanity Fair*). In that respect, I accept Associated's submission that the Article's express reference to *Vanity Fair*, and its close tracking of the same narrative, materially weaken the reliance that can be placed on Mr Furnish's understandable reaction that he could not see how the "*Damian*/*The Omen*" detail had become public.

350. Insofar as any passages in the Article go beyond what can be traced to the *Vanity Fair* account or other contemporaneous reporting, the evidence does not enable the Court to identify the precise route by which that additional detail was obtained. In those circumstances, the Court cannot make a positive finding that such material was lawfully sourced. But that does not assist the Claimants: the absence of a positively established lawful explanation cannot, without more, supply the missing evidential link or justify an inference of UIG. The question remains whether UIG is proved on the balance of probabilities; and, for the reasons already given, it is not.

351. I accept the evidence of Ms Hurley that she did speak to Mr Bing from the Windsor landline and that those conversations were private and often confrontational. I also accept that publication of an account of such a conversation could properly be experienced as a serious intrusion. However, the issue I must decide is not whether the information was private in that sense; it is whether the Claimants have proved that it was obtained through UIG by or on behalf of Associated. On the evidential material available for this Article, she has not.

352. Nor do I consider it appropriate to draw an adverse inference from the absence of evidence from Ms Newton. I adopt similar reasoning as for Article (6) (see [322] above). This Article is also almost 24 years old. In the absence of any Article-specific documentary material indicating unlawful acquisition, it would be speculative to treat her non-attendance as probative of wrongdoing, still less to use it to supply a missing evidential link. Additionally, the original allegation advanced by the Claimants was that this was an instance of UIG by Mr Burrows.

353. As to the material attributed to Ms Hurley's "*inner circle*" about her wish to avoid court proceedings over money and to resolve matters privately, the evidence shows that similar themes were already appearing in other press reporting around the same time. Even if the statements were regarded as personal, their presence is not, without more, a proper basis to infer unlawful acquisition, in the absence of a cogent episode-specific link to unlawful conduct.

354. Bringing these strands together, I am not satisfied that the Claimants have proved (on the balance of probabilities) that the relevant information in this Article was obtained through UIG carried out or commissioned on Associated's behalf. It follows that liability is not established in respect of this Article, and it is unnecessary for me to determine any further issues for this Article.

(8) "*Bing to pay £7,000 a month for Hurley's baby*": *Mail on Sunday* 23 June 2002 (Katie Nicholl)

355. This is the fifth Article relied upon by Ms Hurley in her claim.

356. The Article complained of appeared in *The Mail on Sunday*, on 23 June 2002, under the headline "*Bing to pay £7,000 a month for Hurley's baby*" and was bylined to Katie Nicholl.

357. The Article states, in substance, that Mr Steve Bing had agreed to pay for the upkeep of Ms Hurley's son, but would not pay "*a penny*" to Ms Hurley; that he had agreed to pay US$10,000 a month (about £7,000) in child maintenance; and that any agreement would be conditional upon Ms Hurley providing accounts detailing expenditure on the child. It attributes those matters to a "*source close*" to Mr Bing.

(a) The issues

358. The pleaded allegation in relation to this Article is that the relevant information was obtained through UIG for which Associated is responsible. The case advanced at trial was that the information was knowingly obtained through (i) voicemail interception and/or other unlawfully obtained information allegedly obtained by Gavin Burrows, and/or (ii) itemised phone billing data obtained (or commissioned) through Capitol Inquiry (or another source) and used with knowledge that it had been unlawfully obtained. Ms Hurley also originally characterised the information in the Article as legally privileged (as relating to financial arrangements between her and Mr Bing). Associated disputed that there was any proper evidential basis for treating it as such, and the point was not pursued further.

359. The principal issue for determination is whether Ms Hurley has proved, on the balance of probabilities, that the relevant information in the Article was obtained by unlawful means carried out or commissioned on Associated's behalf.

(b) The evidence

360. The Article itself is short and is presented as sourced information ("*a source close to Bing said…*"). The "*new*" material in the Article, relied upon by Ms Hurley, includes (at least) (i) the asserted US$10,000 monthly maintenance figure, (ii) the assertion that Mr Bing would not pay money to Ms Hurley personally, and (iii) the asserted condition that she would have to account for expenditure.

361. Ms Hurley also relied upon documentary evidence relating to Ms Nicholl's notes and her interactions with third parties. In her first witness statement, Ms Nicholl said that, although she initially could not recall the specific source for the maintenance figure, she had reviewed contemporaneous notebook material and payment records which (she said) confirmed that the core information for the story came from a confidential contact labelled "EH5-A", who (she said) moved within Ms Hurley's social set and had access to both Ms Hurley's and Mr Bing's circles. She described that person as a regular tipster whom she knew well.

362. Ms Nicholl said in her witness statement that contemporaneous payment material recorded a payment of £750 with a further £250 "*top-up*" to EH5-A with the description "*Liz and Bing maintenance*", and she said that this confirmed EH5-A as the source for the information reported in the Article. In cross-examination she maintained that both sums related to this story and rejected the suggestion that EH5-A was a freelance journalist. Ms Nicholl also addressed an allegation (as she understood it) that a payment of £1,000 to a third party, around this time, demonstrated significant 'resource' being targeted at Ms Hurley. She said that the notebook/payment material she had seen showed a £750 payment and a £250 "*top-up*" to EH5-A for this story; she did not recall paying cash; and that any such payment would have been processed via the electronic contributor system (i.e. paid by the newspaper on her instruction).

363. Ms Nicholl also referred, in her witness statement, to having the telephone number of Sue Stapley (whom she said she had been reminded was Mr Bing's spokeswoman) in her notebook; she said that beneath that number she had recorded wording very similar to the "*source close to Bing*" quotation in the Article and that it was therefore possible that this aspect of the story derived from off-the-record guidance from Ms Stapley. She also referred to a draft version of her Article which included an attributed quotation from Ms Stapley that did not appear in the final published version. In cross-examination she accepted that the final published Article did not attribute the "*source close to Bing*" quotation to Ms Stapley by name, but maintained that she might have provided off-the-record guidance and/or asked not to be attributed.

364. Ms Nicholl was also cross-examined about a notebook entry containing the words "*private eye*" and a telephone number which was put to her as the number for Capitol Inquiry. She accepted that it was the number for Capitol Inquiry and that it appeared in her notebook, but she denied knowing that Capitol Inquiry obtained billing data or itemised phone bills and denied contacting them to obtain call data relating to communications between Mr Bing and Ms Hurley.

365. Ms Nicholl was also cross-examined about documentary material showing her commissioning of Mr Steve Whittamore/JJ Services in relation to Ms Hurley. She accepted that invoices shown were dated 18 August 2002 and 25 August 2002, i.e. several months after publication of this Article. In her witness statement she said she did not recall commissioning Mr Whittamore in relation to this Article; and she explained that, if any request was made, it would have been to obtain contact details (address/telephone number) so that she could put a story to the subject or persons close to them, rather than to obtain the substance of the maintenance story.

366. Associated relied upon what it contended were lawful source pathways for the Article (including the evidence of Ms Nicholl summarised above, prior reporting and other public domain material).

367. Mr Henderson, in his witness statement, denied instructing Mr Burrows to target Ms Hurley (or to hack, tap or bug phones) and stated that he did not remember the relevant articles or providing information for them.

368. Mr Dillon, in his witness statement, stated that he had no recollection of this Article or being involved in it; and he stated that he had never worked with Mr Burrows and had not heard of him before the allegations in these claims were made.

369. Mr Burrows gave oral evidence at trial. I deal separately with my assessment of his evidence in Appendix 3.

(c) The parties' submissions

370. Ms Hurley submits that the "*maintenance*" information and associated conditions reported in the Article (including the US$10,000 per month figure, the "*no money to Ms Hurley*" point and the accounting condition) were exclusive and private, and that the Court should infer that they were obtained through UIG for which Associated is responsible. Her primary case is that the information was obtained through unlawful interception (hardwire tap and/or voicemail interception) undertaken by Mr Burrows on the instruction of, and through, Mr Henderson, and then passed to Ms Nicholl for publication. In support of that case, Ms Hurley relies on (i) the allegation that Mr Burrows admitted unlawful interception in relation to this Article, (ii) her broader challenge to Ms Nicholl's credibility and the "*propensity*"/*modus operandi* evidence about the use of TPIs, and (iii) the contention that Ms Nicholl's notebook and commissioning material (including the presence of the Capitol Inquiry number and later Whittamore documents) support an inference that the story was derived from unlawful acquisition rather than legitimate sources. Ms Hurley further submits that Ms Nicholl's asserted "*lawful source*" account should be rejected, including the suggestion that the story derived from a confidential tipster and/or off-the-record guidance from Mr Bing's spokeswoman, and that the Court should instead infer unlawful acquisition from the asserted exclusivity and the surrounding third-party indicators.

371. Associated submits that Ms Hurley's allegation that this Article was the product of UIG is without adequate foundation and should be rejected. It submits, first, that Ms Hurley's pleaded "*Burrows*" mechanism is unsupported on the evidence at trial: there is no episode-specific basis for concluding that Mr Burrows supplied information for this Article via Mr Henderson, and it relies in particular on the point that no allegation relating to this Article was put to Mr Henderson in cross-examination (the only specific

"*Burrows article*" put to him was "*Elton takes his boughs*" – Article (5) above). Secondly, Associated submits that the residual TPI points do not establish unlawful acquisition. In particular, it submits:

(1) First, the mere presence of the Capitol Inquiry number in Ms Nicholl's notes is not evidence of instruction or product, and it relies on Ms Nicholl's denial that she contacted Capitol Inquiry to obtain call data or that she knew they obtained itemised phone bills.

(2) Second, that the Whittamore invoices relied upon post-date publication by some months and that no case was put to Ms Nicholl that she knowingly commissioned Mr Whittamore unlawfully in connection with this Article.

(3) Third – and centrally to its "*lawful route*" positive case – Associated relies on Ms Nicholl's evidence that her contemporaneous payment trail and notebook material supported a lawful sourcing explanation: she said the core "*maintenance*" detail came from a confidential source, EH5-A, with access to the relevant social circles, and that the "*source close to Bing*" quotation may have been supported by off-the-record guidance from Sue Stapley (said to be Mr Bing's spokeswoman), while recognising that the final published Article did not attribute that quotation to Ms Stapley by name.

(d) Discussion and conclusion

372. The burden is on Ms Hurley to prove that the relevant information in this Article, on which she relies, was obtained by unlawful means carried out or commissioned on Associated's behalf.

373. A substantial part of the way Ms Hurley originally advanced this claim relied upon what was said to be Mr Burrows' "*admission*" that this Article was the product of unlawful interception (including a hardwire tap). Mr Burrows was ultimately called to give oral evidence. For the reasons I explain in my assessment of his evidence (see Appendix 3), Mr Burrows provides no support for Ms Hurley's claim in relation to this Article.

374. More generally, Ms Hurley's pleaded "*Burrows*" mechanism depended upon establishing that any interception generating the relevant information was undertaken by Mr Burrows on the instruction of, and through, Mr Henderson. In cross-examination of Mr Henderson, no allegation relating to this Article was put to him.

375. Once the Burrows case is put to one side, the remaining basis for Ms Hurley's UIG case is essentially inferential: the contention that the "*maintenance*" detail must have derived from voicemail interception or unlawfully obtained call data, supported by (i) the presence of the Capitol Inquiry number in Ms Nicholl's notes and (ii) later Whittamore invoices. However, those matters must be assessed alongside Ms Nicholl's own account of lawful sourcing for this story, including her evidence that contemporaneous payment records and notes corroborate that the core maintenance detail was supplied by the confidential source "EH5-A" with access to the relevant social circles, and her evidence that the "*source close to Bing*" quotation may have been supported by off-the-record guidance from Mr Bing's spokeswoman.

376. The Claimants also relied on broader evidence/submissions about Capitol Inquiry (including its alleged role in obtaining call/billing information and its later appearance on an internal 'forbidden' list). However, in relation to this Article the only episode-specific material is the notebook entry in which Ms Nicholl wrote "*private eye*" and recorded a telephone number. Ms Nicholl accepted that the number was for Capitol Inquiry, but denied knowing that it obtained itemised phone bills and denied contacting it to obtain call data relating to communications between Mr Bing and Ms Hurley. Beyond the presence of the number, there is no evidence of instruction, product or use of call data for this story.

377. As to Mr Whittamore/JJ Services, the invoices and work lists relied upon are dated August 2002, i.e. some months after publication of this Article. In her evidence, Ms Nicholl said she did not recall commissioning Mr Whittamore in relation to this Article; and she explained that any such commissioning, if it occurred, would have been directed to obtaining contact details to put stories to subjects rather than to obtaining the substance of the maintenance story. On their timing and content, those invoices do not provide an adequate basis to infer that the core maintenance information in this Article was unlawfully obtained.

378. Standing back, and accepting Ms Nicholl's evidence on the matters addressed in [375]-[377] (notwithstanding the challenges made to it in cross-examination), I am not satisfied that Ms Hurley has established, on the balance of probabilities, that the relevant information in this Article was obtained by unlawful means carried out or commissioned on Associated's behalf. Ms Hurley's case requires me to infer unlawful acquisition from the asserted exclusivity of the information and the existence of certain TPI markers in Ms Nicholl's material. But, once the Burrows mechanism is rejected, the remaining evidence does not provide sufficient episode-specific support for the conclusion Ms Hurley invites me to draw. In particular, Ms Nicholl's evidence identifies a coherent lawful source pathway for the story (including a contemporaneous payment trail to EH5-A, and possibly from an off-the-record spokesperson), and the additional matters relied upon by Ms Hurley (the Capitol Inquiry number and later Whittamore invoices) do not bridge the evidential gap.

379. It follows that Ms Hurley's claim in relation to Article (8) fails.

(9) "*Why Liz's baby Damian is still waiting for a smile from dad*": *Daily Mail* 14 August 2002 (Victoria Newton)

380. This is the sixth Article relied upon by Ms Hurley in her claim.

381. The Article complained of appeared in the *Daily Mail*, on 14 August 2002, under the headline "*Why Liz's baby Damian is still waiting for a smile from dad*" and was bylined to Victoria Newton.

382. The Article reports, in substance, that after Mr Steve Bing's paternity of Damian had been established by DNA testing there appeared to have been some "*rapprochement*" between his parents, but that matters had deteriorated again. Ms Hurley had flown to Los Angeles with her four-month-old son with a view to the child meeting his father for the first time; that the meeting was now said to be "*unlikely*" following a "*heated phone conversation*" between them; and that "*a source close to the couple*" said that bitterness remained and that it looked "*very unlikely*" they would reach agreement.

383. The Article also includes additional detail about Ms Hurley's travel (London to New York and then Los Angeles), her accommodation in a five-star hotel, and references to public statements attributed to her (including that she wanted no money from Mr Bing and quotations about motherhood), and it is illustrated with photographs of Ms Hurley and Damian arriving at Los Angeles airport.

(a) The issues

384. The pleaded allegation in relation to this Article is that Associated misused Ms Hurley's private information through the unlawful obtaining of information said to have been used in the Article.

385. The Claimants allege that the information that was unlawfully obtained for this Article is: details of Ms Hurley's trip to Los Angeles; pictures of Ms Hurley and her baby including a close-up of his face; and information relating to a private telephone conversation between Ms Hurley and Mr Bing. The specific unlawful mechanism alleged is that TDI/ELI targeted Ms Hurley at the relevant time on the instruction of Ms Newton, and that the Article contained the fruits of information obtained by TDI/ELI.

386. The principal issue for determination is therefore whether Ms Hurley has proved, on the balance of probabilities, that the relevant information in the Article (and in particular the alleged private information relied upon) was obtained by unlawful means carried out or commissioned on by Associated.

(b) The evidence

387. The Article itself is presented as a short narrative report with sourcing attributed, in part, to "*a source close to the couple*" in relation to the alleged breakdown in arrangements and the alleged "*heated phone conversation*".

388. Ms Hurley's evidence about this Article in her second witness statement – specifically her evidence about the private and restricted nature of the information relied upon – was not challenged in cross-examination.

389. Neither Ms Newton (the bylined journalist) nor Tony Gallagher (the desk head) provided evidence at trial in relation to this Article.

390. Ms Hurley relies as "*propensity*" material relating to Ms Newton, on (among other matters) TDI invoices dated 22 October 2001 and 3 April 2002 when she was at *The Sun* (see [317] above), and on records of commissions of ELI in late 2002.

391. In the Claimants' written closing submissions, the Article is advanced as an incident where Ms Hurley's evidence stands unchallenged and where Ms Newton's absence is relied upon as a basis for inviting an adverse inference that the article was produced using information obtained by UIG.

392. In Associated's written closing submissions, it is said (i) that the pleaded claim identifies no particular unlawful act alleged to have been carried out in respect of this Article, and (ii) that, in summary, the sourcing was photographs of Ms Hurley with her son at Los Angeles Airport, previously published reporting that Ms Hurley had travelled

to Los Angeles with a view to taking her son to meet his father, and (it is said) a source or sources available to Ms Newton; Associated submits that the claim in respect of the Article should be dismissed as legitimately sourced.

(c) The parties' submissions

393. Ms Hurley submits that the Court should infer that Associated obtained private information relating to a private telephone conversation with Mr Bing (including the asserted "*heated phone conversation*") by UIG based on the nature of the information relied upon, Ms Hurley's unchallenged evidence, and the absence of evidence from Ms Newton notwithstanding her being "*readily contactable*".

394. Associated submits that (as pleaded) no particular unlawful act is identified for this Article and that, in any event, the material can be explained by lawful sourcing routes: photographs and prior reporting, together with the likelihood of information coming from sources (including, as it puts it, sources in Los Angeles) and press briefing in the context of ongoing publicity around Ms Hurley and Mr Bing. The Article "*was legitimately sourced*" and that the claim in respect of it should be dismissed.

(d) Discussion and conclusion

395. The burden is on Ms Hurley to prove, on the balance of probabilities, that the relevant information on which she relies in this Article was obtained by unlawful means carried out or commissioned on Associated's behalf. Ms Hurley's case focuses on the proposition that the Article contains the fruits of TDI/ELI activity commissioned by Ms Newton, and on the contention that the material about the "*heated phone conversation*" (and the associated inference that a meeting was now "*unlikely*") is exclusive and private in nature.

396. Against that, Associated's response is (i) that the pleaded claim identifies no particular unlawful act in relation to this Article, and (ii) that the narrative can be explained by photographs and prior reporting, supplemented by sources and/or press briefing, such that the Court should reject an inference of unlawful acquisition.

397. This is another Article where there is an absence of any TPI evidence showing any related instructions. Ms Hurley's case is based on an inference that such commissioning would have been carried out by Ms Newton. I do not accept that there is a reliable evidential base to draw that inference. I adopt the analysis from Article (6) (see [320]-[331]). The absence of evidence from Ms Newton means that there is no evidence as to the lawful sourcing for the Article, but for similar reasons as I have set out for Article (6), I draw no adverse inference from Ms Newton's absence as a witness (nor Mr Gallagher).

398. Ms Hurley has failed to demonstrate any UIG in relation to Article (9) and the claim in respect of this Article will be dismissed.

(10) *"Now I wish I'd stayed with Hugh, admits a lonely Liz"*: *Daily Mail* 28 September 2002 (Nicole Lampert)

399. This is the seventh Article relied upon by Ms Hurley in her claim.

400. The Article appeared in the *Daily Mail*, on 28 September 2002, under the headline "*Now I wish I'd stayed with Hugh, admits a lonely Liz*" and was bylined to Nicole Lampert. The Article reported, in substance, that Ms Hurley, then recently a mother, was finding it difficult to form a new relationship; that she had said to friends that having a baby made it almost impossible to meet a new partner; that she had reflected wistfully on her former relationship with Hugh Grant; and that, according to "*a source close to the actress*", she found single motherhood harder than she had expected and wanted a stable relationship. The Article also referred to Ms Hurley being in New York for appearances and to her appearance and weight loss after pregnancy.

(a) The issues

401. The pleaded allegation in relation to this Article is that Associated misused Ms Hurley's private information through the unlawful obtaining of information used in the Article. The information relied upon is, in substance, Ms Hurley's thoughts and feelings about her personal life.

402. Ms Hurley's pleaded case is that Ms Lampert instructed ELI in connection with this Article and used it to gather information unlawfully. This allegation is founded on two entries within the *Daily Mail* Ledger recording payments to ELI, dated 1 and 2 October 2002, for £170 and £170.38 respectively. The Ledger entries do not, however, expressly identify the subject matter of the work or link the payments to this Article.

403. The only TPI pleaded as having been used by Ms Lampert in connection with this Article is ELI. Although Ms Hurley suggested in her witness evidence that Gavin Burrows may have been involved, that was not pleaded. Nor was this Article included on Mr Burrows' Schedule (see [A3.77(2)]).

404. The principal issue for determination is therefore whether Ms Hurley has proved, on the balance of probabilities, that the relevant information in the Article was obtained by unlawful means carried out or commissioned by Associated, in particular through ELI.

(b) The evidence

405. The Article itself is presented as a short showbusiness report. The more personal material is attributed to what is described as "*a source close to the actress*". The thrust of the Article is not that Ms Hurley had been overheard in any private conversation with Mr Grant, but that she had expressed personal views to friends and that a source had reported those views to the newspaper.

406. Ms Hurley addressed this Article in her second witness statement and her evidence as to the private and restricted nature of the information was not challenged in cross-examination.

407. Ms Lampert said that, more than 20 years later, she did not remember writing the Article and had been unable to locate any contemporaneous notes. Having reviewed the Article, she said that she thought the story that Ms Hurley was in New York for appearances, had been on a diet after pregnancy and was looking to date again was most likely sourced from a US magazine, obtained via a US freelancer, Drew McKenzie, who would review American magazines and fax potentially relevant material to her. She also said that she had a confidential non-journalist source who moved in the same social

circles as Ms Hurley and her friends, and that some of the more conversational detail in the Article – including the comments that Ms Hurley felt being a single mother made dating difficult and that she sometimes thought she should have stayed with Hugh Grant – may have come from that source. She added that she did not remember using ELI for this story and, re-reading it, could see no reason why ELI would have assisted because it did not appear to involve a doorstep or obtaining an address to track someone down. The two Ledger entries merely recorded "*Enquiries*" for Ms Lampert, without identifying the target of the search or any particular article.

408. In cross-examination, Ms Lampert accepted that the Article contained "*very intimate and personal thoughts*" and "*very personal material*". It was put to her that no US magazine matching her description had been found and that the explanation in her witness statement was therefore unlikely. She maintained that this remained her "*best guess*" reconstruction of the sourcing, based on her working practices at the time, and explained that Drew McKenzie would fax her material from American magazines, sometimes keeping stories back for her if they concerned celebrities in whom the *Mail* was interested.

409. It was also put to Ms Lampert that the ELI payments, of 1 and 2 October 2002, were likely to relate to this story and were not likely to have been for something as mundane as a telephone number or address. She did not accept that proposition, maintained that she did not believe ELI had been used for this story, and said that she could not see how ELI would have assisted in relation to the content of the Article.

410. During cross-examination, it was further put to Ms Lampert that, in addition to information provided by ELI, either she or her source had accessed voicemail messages of Ms Hurley or of Sir Elton John and David Furnish to obtain the quoted material in the Article. Ms Lampert denied that allegation. She said that, if Ms Hurley had left this sort of information in voicemail messages, that would be "*quite strange*", and stated unequivocally that the material in the Article did not come from voicemail messages.

411. In re-examination, Ms Lampert was shown published interviews with Ms Hurley in *Harper's Bazaar* (August 2002) and *Pop* (September 2002), in which Ms Hurley spoke publicly about her relationship with Mr Grant and related topics. Ms Lampert accepted that these were the sort of public expressions of feeling she had in mind when she said that Ms Hurley often spoke about her feelings.

(c) The parties' submissions

412. Ms Hurley submits that the Court should infer UIG from the highly personal nature of the material in the Article, the proximity of the two ELI payments to the publication date, the absence of any identified US magazine containing the relevant material, and the implausibility (as she puts it) of the suggestion that such intimate information would have been passed by a friend into a magazine or otherwise lawfully sourced. In closing, the Claimants also advanced the contention that Ms Lampert or her source had accessed voicemail messages in order to obtain the content of the Article.

413. Associated submits that the pleaded case is confined to an allegation that Ms Lampert used ELI to obtain information unlawfully; that the two ELI ledger entries are not demonstrably linked to this Article; that Ms Lampert's evidence as to likely sourcing through a US magazine, supplemented by a confidential social source, should be

accepted; and that the allegation of voicemail interception was unpleaded, unsupported by evidence and should not have been made.

(d) Discussion and conclusion

414. The burden is on Ms Hurley to prove, on the balance of probabilities, that the relevant information in this Article was obtained by unlawful means carried out or commissioned on Associated's behalf. The pleaded case focuses on the proposition that Ms Lampert instructed ELI and used it to obtain information unlawfully. That case depends, in documentary terms, on no more than the existence of two ELI ledger entries, on 1 and 2 October 2002. Those entries prove that payments were made to ELI on those dates, but they do not identify the subject matter of the work, nor do they link it to this Article.

415. I do not consider that the proximity in date of those ledger entries to the publication of the Article is sufficient, without more, to support the inference that ELI was used for this story, still less that it was used to obtain information unlawfully for this story. There is no surviving invoice linking ELI to the Article; no note, fax or other contemporaneous document tying ELI to it; and no pleaded case identifying with any precision what unlawful act ELI is said to have performed in relation to the Article.

416. Ms Lampert's evidence as to sourcing was necessarily reconstructive. She frankly accepted that she could not remember writing the Article and that what she gave was a "*best guess*" based on her working practices at the time. That does not, in itself, render her evidence valueless. Her account – that the core of the story likely came from a US magazine sent to her by Drew McKenzie, perhaps supplemented by conversational detail from a confidential social source – is consistent with what she said in her witness statement and with the way she explained her practice in oral evidence. I accept that evidence as her honest reconstruction of the likely sourcing of the Article.

417. The fact that no US magazine matching her description has now been located is, at this distance in time, equivocal. It may be that such a magazine existed and is no longer obtainable; it may be that it cannot now be identified. The absence of any magazine does not positively support either side's case. It is not evidence from which I can safely infer that the explanation given by Ms Lampert was false.

418. As to the allegation of voicemail interception, I accept Associated's submission that it was not properly open to the Claimants to advance it in relation to this Article. It was not pleaded, had no evidential foundation, and was put for the first time in cross-examination. It was denied by Ms Lampert; and I reject it. The same is true of any suggestion that this Article was the product of work by Mr Burrows: no such case was pleaded in relation to this Article, there is no evidence from Mr Burrows that he was involved with this Article, and it was not included on his Schedule.

419. In those circumstances, Ms Hurley has failed to prove, on the balance of probabilities, that the information in Article (10) was obtained by UIG carried out or commissioned by Associated. The claim in respect of this Article will be dismissed.

(11) *"Jude Law plans to sue club over his daughter's Ecstasy tablet…"*: *Mail on Sunday* 13 October 2002 (Nick Pryer)

420. This is the first Article relied upon by Ms Frost Law in her claim.

421. The Article complained of appeared in the *Mail on Sunday*, on 13 October 2002, under the headline "*Jude Law plans to sue club over his daughter's Ecstasy tablet – Film star calls for celebrity boycott at nightspot where two-year-old swallowed drug*" and was bylined to Nick Pryer. The Article reported, in substance, that Mr Law was planning to sue Soho House after his daughter, Iris, had swallowed part of a discarded Ecstasy tablet at a children's birthday party; that he had told his family he was putting the matter in the hands of lawyers; that he had sworn to boycott Soho House and to urge others to do likewise; and that the incident had created considerable tension between him and Ms Frost Law. The Article also contained detail about the circumstances in which the tablet was discovered, Ms Frost Law's reaction, and the subsequent medical treatment said to have been given to Iris, including that her stomach was pumped and that she was given a brain scan.

(a) The issues

422. The information in the Article to have been obtained through UIG is: "*Information as to an incident affecting the Claimant's and Jude Law's daughter at a private venue, and the aftermath, including their intention to pursue legal action and the impact on their relationship*".

423. Unlike some other Articles in the claim, no specific act of UIG is pleaded in respect of this Article. Nor was any specific case of UIG put to Mr Pryer in cross-examination. The issue for determination is therefore whether, on the evidence as a whole, Ms Frost Law has nevertheless proved, on the balance of probabilities, that the relevant information in the Article was obtained by unlawful means carried out or commissioned on Associated's behalf.

(b) The evidence

424. The Article itself is a short report presented as an update on a story already in the public domain. Some of the more specific material is attributed to "*a friend*", "*friends*", "*one acquaintance*" and "*close friends*". The new element in the story, at least on its face, was Mr Law's reported reaction to the incident and the suggestion of legal action and a boycott of Soho House.

425. Mr Pryer addressed the Article in his witness statement. He said that he did not recall writing any stories about Ms Frost Law and Mr Law until he was shown this Article, but that he recognised it once he had seen it. He said that this was not an article he commissioned; rather, he said he had a vague recollection that he was asked to write up some quotes received from a freelance journalist, probably by the Features Editor or Deputy Features Editor, which was the usual practice. He was not a showbusiness journalist and did not have contacts in the Frost/Law group.

426. Mr Pryer said that he did not know who the freelance journalist was and that he would not have known how the freelance got the information because he had no interaction with the freelance in relation to the story. He explained that there were a few freelance journalists who had "*ins*" with the Primrose Hill set and usually provided accurate information, whether because they acted as mouthpieces for those involved or had other sources, perhaps through friends, agents or publicists. His evidence was that the

quotations used in the Article would only have been passed to him if they were from a trusted freelance with an established track record and that the story seemed a believable update to what had already appeared in the press.

427. Mr Pryer also said that he would have looked at newspaper cuttings to develop the story and identified a series of earlier articles, dated 7 and 8 October 2002, from the *Evening Standard*, Associated Press, the *Daily Mail*, the *Express* and the *Telegraph*. Having looked at those cuttings, he said they reminded him of how much information there already was in the public domain about the Soho House incident before the *Mail on Sunday* story was published, including speculation about legal action. He said that the freelance-provided quotes appeared to be the first expressing Mr Law's point of view, and that this was why he decided to mention Mr Law at the beginning of the story. Finally, he stated expressly that he did not instruct a private investigator or search agent to assist him in gathering information for this Article and had no reason to believe that the freelance journalist who provided the quotes, or anyone else at the *Mail on Sunday*, had done so.

428. In cross-examination, Mr Pryer accepted that some of the material in the Article was not to be found in the cuttings he had been shown, including that Mr Law was actively planning to sue Soho House, that he had sworn to boycott it and urge associates to do likewise, and that the incident had created considerable tension between him and Ms Frost Law. He accepted that this was new material and that it was the "*nub*" of the story and its attraction for the paper.

429. Mr Pryer's evidence in cross-examination remained, however, that this new material was the information he had been provided with and that his role was essentially to write it up. He said he was "*merely asked to rewrite it*". When asked about the likely source, he said that he did not know the exact identity of the freelance's source, but was generally aware that the freelance had a mutual friend with Sadie Frost or Jude Law and that the information had proved reliable in the past. He also accepted that he did not ask how that source obtained the information.

430. During his evidence, Mr Pryer referred to a payment record from the Features Desk to Sharon Feinstein whom, he thought, may have been the freelance journalist who had provided the material for this story. He did not, however, identify that with certainty. Associated submitted that, in view of Mr Pryer's evidence "*it seems likely*" that the freelancer who provided the information in question was Sharon Feinstein. There is a payment record for the Features department for the week ending 20 October 2002 showing that Ms Feinstein was paid £1,500 with a description of "*interviews with Sadie Frost's family*".

431. Mr Pryer was also asked in general terms about Jonathan Stafford and his use by the Features department for names, addresses and telephone numbers. He said that this was what he and the department used Mr Stafford for and that, once in-house search facilities became available, they no longer needed to use him. No specific allegation was put to Mr Pryer that he had used Mr Stafford, or any other investigator, in relation to this Article. Nor was any case put that the information in the Article had been obtained through voicemail interception.

(c) The parties' submissions

432. Ms Frost Law submits that the Court should infer UIG from a combination of factors. First, she relies on her own evidence, and the evidence of Mr Law ([A2.508]) and Mr Jackson ([A2.491]-[A2.493]), that the information in the Article was private and restricted, and in particular that Mr Law was abroad filming with poor signal and that he and Ms Frost Law relied heavily on voicemail messages to discuss the incident. She points, in particular, to the detail in the Article concerning the medical aftermath and the strain on the relationship, and to the evidence that some private information could not plausibly have come from anywhere other than a voicemail message or conversation.

433. Second, Ms Frost Law submits that Mr Pryer's evidence was of limited value because he had very little memory of the Article, could not identify the freelance journalist or the source, and accepted that some significant parts of the story were not contained in the prior cuttings. On that basis, it is submitted that there is effectively no satisfactory defence evidence as to how the Article was sourced.

434. Finally, Ms Frost Law points to Mr Pryer's evidence as to the use of a freelance journalist. No invoice has been produced, and the Court should treat that as suspicious.

435. Putting these matters together, Ms Frost Law submits that the Court should infer that the private information in the Article was obtained by unlawful means.

436. Associated submits that the pleaded case in respect of this Article identifies no specific unlawful act and that no such case was put to Mr Pryer in cross-examination. It submits that the evidence shows a conventional features-desk process in which an article was written up from a mixture of press cuttings and information provided by a freelance journalist who had access to a source in the Frost/Law circle. Associated further submits that much of the story, including the possibility of legal action and the fact that Mr Law had been kept informed by telephone while abroad, had already been reported elsewhere before publication of the Article; that the Article was capable of being legitimately sourced in that way; and that the claim should therefore be dismissed.

(d) Discussion and conclusion

437. The burden is on Ms Frost Law to prove, on the balance of probabilities, that the relevant information in this Article was obtained by unlawful means carried out or commissioned on Associated's behalf. This is not a case in which any specific unlawful mechanism has been pleaded in relation to the Article. Nor is it a case in which such a mechanism was put to the bylined journalist in cross-examination. That matters. Serious allegations of UIG require a proper evidential foundation and fair presentation to the witness concerned. They cannot be made good merely because the information was private or because Associated cannot now identify every step in the sourcing chain.

438. I accept that the Article contained some information which was not identified in the press cuttings shown to Mr Pryer and which was, in that sense, additional or exclusive. In particular, the references to Mr Law planning to sue Soho House, boycott it, and the tension this had supposedly caused between him and Ms Frost Law, were accepted by Mr Pryer as not appearing in the cuttings he had reviewed. But the fact that information is additional or exclusive does not, of itself, establish that it was unlawfully obtained.

439. Mr Pryer's evidence was limited by the passage of time, but I do not regard that as a reason to reject it. His account of the likely sourcing of the Article was consistent. He did not commission the Article; he was asked to write up material that had come from a freelance journalist, which Associated suggests may have been Sharon Feinstein. He was not a showbusiness reporter and did not have direct contacts in the Frost/Law circle. He combined the freelance material with press cuttings in the ordinary way of the Features desk. That evidence was not displaced by anything put to him in cross-examination. As I explain in Appendix 2, I found Mr Pryer to be an honest and straightforward witness who did not seek to overstate his recollection.

440. The Claimants rely heavily on the proposition that some of the information could only have come from voicemail messages or private conversations. That was not, however, a specific case put to Mr Pryer. Nor is there any direct evidence linking this Article to voicemail interception, call data, or any other form of UIG. The evidence does not permit a finding, on the balance of probabilities, that such unlawful means were used. In substance, the Claimants' case on this Article invites the Court to treat the absence of a complete explanation from Associated as sufficient to establish UIG. That is not a permissible approach. The absence of a satisfactory defence explanation may, in an appropriate case, form part of the evidential picture, but it cannot relieve the Claimant of the burden of proving, by evidence and proper inference, that UIG occurred in relation to the Article. At most, the Claimants establish that there was private information in the Article and that Mr Pryer could not now identify precisely how the freelance's source obtained it. That is insufficient to discharge the burden of proof.

441. For those reasons, I am not satisfied that Ms Frost Law has demonstrated UIG in respect of Article (11). The claim in relation to this Article will be dismissed.

(12) *"Model Kate will have her baby christened with a touch of Frost"/"Kate has touch of Frost for new baby"*: *Daily Mail* 19 October 2002 (Victoria Newton)

442. This is the second Article relied upon by Ms Frost Law in her claim.

443. The Article complained of appeared in the *Daily Mail* on 19 October 2002, under the headlines "*Model Kate will have her baby christened with a touch of Frost*"/"*Kate has touch of Frost for new baby*" and was bylined to Victoria Newton. In substance, it reported that Kate Moss had asked Ms Frost Law and Mr Law to be godparents to her newborn daughter; that a joint christening was being planned with Ms Frost Law's and Mr Law's newborn son; and that the ceremony would take place once Mr Law had returned from filming in Romania. The Article also included some additional descriptive material about the closeness of the friendship between Ms Moss and Ms Frost Law, and other details concerning Ms Moss's domestic arrangements.

(a) The issues

444. The information in the Article said to have been obtained through UIG is: "*Information as to the Claimant's relationship with her associate Kate Moss, including as to Ms Moss' daughter's christening*".

445. Ms Frost Law's pleaded case in respect of this Article is based exclusively on three payments to ELI/TDI, with Ledger entry dates of 18 October 2002, 24 October 2002 and 25 October 2002. The pleaded allegation appears to be that it can be inferred from

the description "*SHOWBIZ*" in the description column, combined with the proximity of the dates, that those payments were for "*unlawful enquiries*" commissioned in connection with this Article. No specific act or mechanism of UIG is pleaded in relation to this Article.

446. The issue for determination is therefore whether, on the evidence as a whole, Ms Frost Law has proved, on the balance of probabilities, that the relevant information in the Article was obtained by unlawful means carried out or commissioned on Associated's behalf.

(b) The evidence

447. Ms Frost Law addressed this Article in her third witness statement. She said that she and Mr Law were asked to be godparents to Ms Moss's newborn baby; that it was planned that there would be a joint christening with their son once Mr Law returned from filming in Romania; and that this was "*true, private and very specific information*" published by the *Mail*, although the christening never in fact took place. She said that she and Ms Moss were "*on the phone all of the time*" at that point and regularly exchanged voicemail messages; that she kept the matter very private; and that publication of the story was awkward and upsetting because such matters were deeply personal. She also said that Mr Law was away filming in Romania and that she was regularly leaving him voicemails, including, she believed, about the christening and the plans. Finally, she identified concerns at the time about information leaking from within her close circle, including speculation about friends and her sisters.

448. Jude Law also gave evidence about this Article ([A2.509]). His evidence was that the information about the proposed christening and the request that he and Ms Frost Law act as godparents was private, specific, and ultimately inaccurate in the sense that the event did not in fact happen. The Claimants rely on that evidence as supporting the proposition that the information was private and restricted.

449. Ms Newton did not give evidence. Accordingly, there is no direct witness evidence from the bylined journalist as to how the Article was sourced. In practical terms, that limits the extent to which Associated can put forward a positive article-specific account of sourcing beyond what can be gathered, and properly inferred, from the contemporaneous material and the surrounding circumstances.

450. There is, however, evidence that some of the subject matter of the Article had already entered the public domain before publication. Associated relied on prior reporting that Kate Moss was planning a joint christening for her baby daughter with Ms Frost Law and Mr Law and their newborn son, including a report in *The Sun* on 5 October 2002. Associated also pointed to earlier reports that Ms Frost Law had been present at the birth of Ms Moss's daughter and that Ms Moss and she had decided to hold a joint christening. In addition, there had been media speculation, including in *Vogue* magazine on 16 October 2002, that Ms Moss would ask Ms Frost Law to be godmother.

451. What appears to have been additional in the Article was the assertion that Ms Moss had asked both Ms Frost Law and Mr Law to be godparents, that the joint christening would take place after Mr Law had returned from Romania, and some further descriptive material about the friendship and surrounding domestic detail. There is no direct evidence as to how that additional material was obtained.

452. The only documentary material specifically relied upon by Ms Frost Law as probative of UIG in relation to this Article consists of the three ELI/TDI ledger entries referred to above. The entries are described as "*SHOWBIZ ENQUIRIES*", "*SHOWBIZ RESEARCH*" and "*RESEARCH SHOWBIZ*". There is, however, nothing on the face of those entries identifying Ms Frost Law, Ms Moss, Mr Law, this Article, or Victoria Newton. Associated submits that the amounts shown are likely to be composite amounts and that the entries do not permit any reliable linkage to this Article.

(c) The parties' submissions

453. Ms Frost Law submits that the Court should infer UIG from a combination of factors. First, she relies on her own evidence, which was not specifically challenged in relation to this Article, that the information was "*true, private and very specific*", that she and Ms Moss were frequently speaking by telephone and exchanging voicemail messages, and that she also believed she left voicemails for Mr Law about the christening plans while he was in Romania. She submits that this evidence shows that the information was private and restricted and unlikely to have been obtained legitimately.

454. Secondly, Ms Frost Law submits that the ELI/TDI payments, on 18, 24 and 25 October 2002, support an inference that unlawful enquiries were commissioned by the *Daily Mail* Showbiz department in connection with this Article. She also relies, by reference to the trial matrix, on what is said to be Ms Newton's propensity for commissioning UIG.

455. Thirdly, the Claimants submit that the absence of evidence from Ms Newton is significant. They contend that Associated has "*proffered no evidence to rebut*" Ms Frost Law's case on this Article, that Ms Newton was plainly contactable and that the Court should draw the inference that she was not called because her evidence would not have supported Associated's case. On that basis, the Claimants submit that the obvious inference is that Ms Newton, and/or the relevant *Daily Mail* desk, instructed ELI, most likely to blag information and facilitate voicemail interception of Ms Frost Law and/or her associates, for the purposes of this Article.

456. Associated submits that the Claimants' case fails at the outset because there is no pleaded act of UIG in relation to this Article and no proper articulation of the mechanism by which the information is said to have been obtained unlawfully. It submits that there is nothing in the ELI/TDI ledgers connecting the payments relied upon to this Article, to Ms Frost Law, or to Ms Newton; that the suggestion that the entries can be linked merely because they refer to "*SHOWBIZ*" and are proximate in date is simply conjecture and insufficient; and that the absence of a specific pleaded mechanism cannot be cured in submissions.

457. Associated further submits that some of the information in the Article was already in the public domain before publication, including the fact of a proposed joint christening and speculation that Ms Frost Law would be asked to act as godmother. It submits that this prior reporting negatives any suggestion that the subject matter was wholly secret and that the additional detail in the Article was capable of having been obtained by lawful means.

458. Finally, Associated submits that no case that the information was obtained by voicemail interception was pleaded; that any such suggestion appeared only in the Claimants' trial

matrix; and that it is not open to the Claimants to advance such a case in closing submissions.

(d) Discussion and conclusion

459. The burden is on Ms Frost Law to prove, on the balance of probabilities, that the relevant information in this Article was obtained by unlawful means carried out or commissioned on Associated's behalf. This is not a case in which any specific unlawful mechanism has been pleaded in relation to the Article. Nor is there article-specific evidence linking this Article to any identified act of blagging, voicemail interception, call-data access or other species of UIG.

460. I have already considered, in earlier Articles involving Ms Newton, the Claimants' attempt to establish a propensity case against her by reference to TDI/ELI material and by reliance on her absence from trial. I rejected that case on the evidence. Nothing in the Claimants' closing submissions in relation to this Article provides a proper basis for departing from those conclusions. In relation to this Article, the case is, if anything, weaker: there is no specific unlawful mechanism pleaded, no article-specific documentary material, and the only TDI/ELI material relied upon consists of three ledger entries bearing generic "*SHOWBIZ*" descriptions.

461. I accept that the absence of evidence from Ms Newton places a practical limit on the extent to which Associated can advance a positive account of how this Article was sourced. In those circumstances, Associated can do little more than point to matters already in the public domain and submit that the additional detail in the Article was capable of being obtained by lawful means. But that limitation on Associated's positive case does not alter the burden of proof. Nor, consistently with the approach set out at [57]-[60], does Ms Newton's absence justify the adverse inference invited by the Claimants or supply the missing evidential link. The question remains whether Ms Frost Law has proved UIG in relation to this Article by evidence and proper inference.

462. In my judgment, she has not done so. The prior reporting is significant because it negatives the proposition that the underlying subject matter of the proposed christening was wholly secret. That does not, of course, explain every feature of the Article, and there was some additional detail. But the evidential basis upon which the Claimants ask the Court to move from that fact to a finding of UIG is inadequate.

463. The three ELI/TDI entries relied upon are not linked, on their face or by any other evidence, to Ms Frost Law, Ms Moss, Mr Law, Ms Newton or this Article. The inference invited by the Claimants depends essentially on the descriptions "*SHOWBIZ*", the proximity of the dates, the privacy of some of the information, and the absence of evidence from Ms Newton. Taken together, those matters do not provide a sufficient basis for finding, on the balance of probabilities, that ELI/TDI was instructed in connection with this Article, still less that any such instruction involved UIG.

464. It is also necessary to reject a further step in the Claimants' case. In their trial matrix, they appeared to seek to advance a case that the information in this Article had been obtained by voicemail interception. That was not pleaded. The Claimants are confined to the case they have pleaded, namely that the relevant UIG consisted of the use of TDI/ELI. For the reasons already given, I reject that case. It is not permissible to seek,

through a trial matrix or closing submissions, to substitute or add a different unpleaded mechanism of UIG. In substance, the Claimants' case invites the Court to conclude that, because the information was private and because Associated cannot positively explain how it was sourced, the Article must have been unlawfully sourced. That is not a permissible approach. No specific case of voicemail interception was pleaded in relation to this Article. It is not permissible, through a trial matrix or closing submissions, to substitute for the pleaded case a different and more serious unpleaded mechanism of UIG. In any event, there is no article-specific evidence capable of supporting such an allegation.

465. For those reasons, I am not satisfied that Ms Frost Law has demonstrated UIG in respect of Article (12). The claim in relation to this Article will be dismissed.

(13) "*Harry's older woman*": *Mail on Sunday* 8 December 2002 (Katie Nicholl)

466. This is the second Article relied upon by Prince Harry in his claim.

467. The Article was published in *The Mail on Sunday*, on 8 December 2002, under the headline "*Harry's older woman*" and was bylined to Katie Nicholl. It reported that Prince Harry had "*set his sights*" on Natalie Pinkham, that he had been sending her text messages and emails, and that he had invited himself to a private party at Ms Pinkham's West London home. The Article also recorded Ms Pinkham's position, namely that she and Prince Harry were not "*an item*", although they "*get on well and have a lot of fun*".

468. Prince Harry alleges that the information in the Article was obtained by UIG. The pleaded case was that Ms Nicholl obtained Ms Pinkham's mobile telephone number and then commissioned a blagger to obtain itemised billing data, from which it was inferred that Prince Harry was in regular contact with her. No case was pleaded that Ms Nicholl herself engaged in voicemail interception in relation to this Article.

(a) The issues

469. The issue, therefore, is whether Prince Harry has proved, on the balance of probabilities, that the relevant information in the Article was obtained by unlawful means carried out or commissioned on Associated's behalf.

(b) The evidence

470. Prince Harry's evidence was that only a very small group of people knew that he and Ms Pinkham were close and that, while he accepted he may have been in regular contact with her, nobody would have known that detail save through access to his call data. The Claimants rely on that evidence as demonstrating the private character of the information in the Article.

471. Ms Nicholl addressed this Article in both her first and second witness statements. In her first witness statement, she said that she did not remember the Article very well, but had refreshed her memory by reviewing a page of her notebook and a recording she made of a conversation with Ms Pinkham. She said that she had previously written about Prince Harry's possible romantic interest in Ms Pinkham and that it was well known that they were friends with a flirtatious relationship. She added that, while Ms Pinkham never volunteered stories about Prince Harry, they were on good terms and Ms Pinkham

would sometimes speak to her off the record; and that she had several sources who knew both Ms Pinkham and Prince Harry well at the time, including one source within Prince Harry's circle who was sometimes present when Prince Harry was on the phone and who had, on at least one occasion, been shown some of his text messages. She said that she spoke to Ms Pinkham to check whether Prince Harry had gone to a party at her house and that Ms Pinkham confirmed that he had, but did not want to discuss it further.

472. In her second witness statement, Ms Nicholl addressed directly the allegation about Ms Pinkham's telephone number and itemised billing data. She said that the number written in her notebook was Ms Pinkham's number. She thought she would have been given it either by Ms Pinkham herself or by one of their many mutual friends. She said that it would not have been unusual for her to have it because she had spoken with and interviewed Ms Pinkham several times for *The Mail on Sunday*. She denied commissioning anyone to provide, or that she had received, Ms Pinkham's itemised phone billing data. She also denied the allegation that information in the draft article to the effect that Prince Harry sent Ms Pinkham text messages "*all the time*" and was always talking about her had been unlawfully obtained, explaining that this likely came from one of her contacts close to Prince Harry, including the source described in her first witness statement.

473. The contemporaneous material includes the Article itself, Ms Nicholl's notebook entries, and the transcript of the recorded conversation with Ms Pinkham. The transcript shows Ms Nicholl putting the story to Ms Pinkham, including the proposition that Prince Harry had "*taken rather a liking*" to her and that he had been at her party. Ms Pinkham confirmed that he had attended the party, but was unwilling to say more. In cross-examination, Ms Nicholl accepted that Ms Pinkham was "*rather guarded*" in that conversation and that they were, at most, acquaintances rather than close friends.

474. Prince Harry also relies on hearsay evidence from Ms Pinkham (contained in an email from her to the Claimants' solicitors – [A2.571]-[A2.572]), adduced under hearsay notice, in which she said that she had "*never once sold a story, been in any way indiscreet or ever disloyal*" and had previously gone on record to deny claims to the contrary. Ms Pinkham was not called to give evidence, and the contents of the email were not tested in cross-examination.

475. During cross-examination, Ms Nicholl was challenged on the basis that the information in the Article about Prince Harry's repeated text messages and emails, and his supposed confidence that he could "*woo*" Ms Pinkham, must have come from itemised billing data or voicemail interception. She denied that. Her evidence remained that she had legitimate contacts within Prince Harry's social circle who could and did provide information of that kind, and that she had spoken directly to Ms Pinkham to check part of the story.

476. A further and more serious allegation was then put to Ms Nicholl in cross-examination, namely that she had herself obtained the information through voicemail interception. Ms Nicholl denied that allegation explicitly and categorically. Elsewhere in her first witness statement she had made clear in general terms that she had "*never hacked a phone*".

(c) The parties' submissions

477. Prince Harry submits that the information in the Article was private and could not have been legitimately known outside a very small circle. He relies on the references in the Article to his bombarding Ms Pinkham with text messages and emails, and on his own evidence that nobody would have known that level of contact save through access to call data. He submits that Ms Nicholl's explanation for how she obtained Ms Pinkham's mobile number was not credible; that not all of the information in the Article was reflected in the notebook; and that the inference to be drawn is that the information was obtained by UIG, most likely voicemail interception.

478. Associated submits that the claim in respect of this Article should be dismissed. It relies on Ms Nicholl's evidence that she had several genuine sources within Prince Harry's and Ms Pinkham's social circle; that she spoke directly to Ms Pinkham to stand up the story; that Ms Pinkham's number could perfectly readily have come from Ms Pinkham herself or mutual friends; and that Ms Nicholl neither used itemised billing data nor engaged in voicemail interception. Associated further submits that the allegation of voicemail interception was an unpleaded and impermissible shift in the case.

(d) Discussion and conclusion

479. The burden is on Prince Harry to prove, on the balance of probabilities, that the relevant information in this Article was obtained by unlawful means carried out or commissioned on Associated's behalf.

480. The pleaded case was a specific one: that Ms Nicholl obtained Ms Pinkham's mobile telephone number and then commissioned a blagger to obtain itemised billing data. That case was not proved. There is no article-specific documentary material showing that any blagger was commissioned, that any itemised billing data was obtained, or that any such material was used in preparing this Article. The fact that Ms Pinkham's number appears in Ms Nicholl's notebook does not establish that it was unlawfully obtained. I accept Ms Nicholl's evidence that she could readily have obtained the number from Ms Pinkham herself or from mutual friends and that there was nothing unusual in her having it.

481. Nor does the fact that not every detail in the Article is reflected in the surviving notes provide a sufficient basis for inferring UIG. The contemporaneous material demonstrates that Ms Nicholl did have a direct conversation with Ms Pinkham in which she checked whether Prince Harry had attended the party at Ms Pinkham's home, and Ms Pinkham confirmed that he had. Ms Nicholl's evidence was also that she had several sources in Prince Harry's social circle, including one who was sometimes present when he was on the phone and who had, on at least one occasion, been shown some of his text messages. I accept that evidence as to the sourcing of the Article.

482. It is also necessary to address the shift in the Claimants' case. In cross-examination, the allegation became that Ms Nicholl herself had engaged in voicemail interception in relation to this Article. That was not pleaded. If the Claimants intended to allege that Ms Nicholl was herself guilty of voicemail interception, that was a serious allegation which should have been pleaded clearly, so that she had proper notice of the case she had to meet and an opportunity to address it in her witness evidence. It is not permissible

to confront a witness for the first time in the witness box with a materially different and more serious mechanism of UIG than that which has been pleaded.

483. In any event, I reject that allegation on the facts. I accept Ms Nicholl's evidence that she did not use voicemail interception, whether specifically on this occasion or generally. Her denial was clear and emphatic. It is consistent with the account she gave in her witness statements. I also accept her evidence as to the sourcing of this Article.

484. The hearsay email from Ms Pinkham does not materially assist the Claimants. It is untested hearsay and, in substance, goes only to Ms Pinkham's denial that she sold a story or had been indiscreet. It does not demonstrate that the information in the Article was obtained unlawfully; nor does it contradict Ms Nicholl's evidence that she had sources other than Ms Pinkham herself within the relevant social circle.

485. Standing back, Prince Harry has failed to prove UIG in relation to this Article on any of the formulations advanced. They have failed to prove the pleaded case that Ms Nicholl obtained Ms Pinkham's number and commissioned a blagger to obtain itemised billing data. They cannot make good their claim by shifting, at trial, to an unpleaded case that Ms Nicholl herself engaged in voicemail interception. And, in any event, I accept Ms Nicholl's evidence as to the lawful sourcing of the Article.

486. In substance, Prince Harry's case invites the Court to infer UIG from the private character of the information, the absence of a complete note of every detail, and Prince Harry's belief that the information could not have become known legitimately. That is insufficient. The Court must decide the case on evidence and proper inference, not on speculation.

487. For those reasons, I am not satisfied that Prince Harry has demonstrated UIG in respect of Article (13). The claim in relation to this Article will be dismissed.

(14) *"So is Liz hurling towards heartbreak again?"*: *Daily Mail* 1 February 2003 (Nicole Lampert)

488. This is the eighth Article relied upon by Ms Hurley in her claim.

489. The Article was published in the *Daily Mail*, on 1 February 2003, under the headline "*So is Liz hurling towards heartbreak again?*", bylined to Nicole Lampert. The information identified in the pleading as private information concerns Ms Hurley's relationship with Arun Nayar, together with details of Mr Nayar's personal background, history and finances.

(a) The issues

490. The issue is whether the Claimants have proved, on the balance of probabilities, that the information published in the article was obtained by UIG. The original pleaded case advanced against Ms Lampert was not a particularised allegation tied to any identified unlawful act in relation to this article. Rather, it relied on an alleged propensity or "*modus operandi*" on Ms Lampert's part to instruct private investigators to gather information unlawfully. There were no pleaded particulars of any instruction of ELI or any other TPI in relation to this article.

491. The position became less clear at trial. Ms Hurley had originally alleged in her trial witness statement (before the relevant part was struck out) that Gavin Burrows was the source of information about Mr Nayar. By the time of trial, however, that Burrows allegation was no longer clearly pursued in relation to this Article. In cross-examination of Ms Lampert, the case shifted to suggestions that details in the article had been obtained from call data procured through ELI and/or by voicemail interception. That shift in the Claimants' case is material to the assessment of whether UIG has been proved.

(b) The evidence

492. The Article was a substantial feature about Ms Hurley's developing relationship with Mr Nayar. It included some social anecdote and colour, for example the scene at a dinner party in a West London home at which Mr Nayar was said to have told Ms Hurley to get him a drink, and observations attributed to "*friends*" about the dynamic of the relationship. It also stated that they had been dating for nearly two months, had gone on a few dates in New York, had spent time together in St Moritz, and that Mr Nayar had been introduced to Ms Hurley's son Damian. In addition, the Article contained material about Mr Nayar's background, family wealth, business affairs, former wife, and a denial by his mother that he was a rich playboy.

493. In her witness statement, Ms Lampert said that she did not now recall writing the Article. She remembered, however, that the fact that Ms Hurley was dating Mr Nayar was public knowledge at the time, that they had attended a public fashion show together a couple of weeks earlier where the photograph illustrating the article must have been taken, and that both the relationship and Mr Nayar's background had been reported extensively in other newspapers. Her evidence was that she would have looked at other reports when working on the article, and, more generally, the coverage in other newspapers which she read every day.

494. Ms Lampert's evidence was that, in addition to that background material, she had a confidential source, identified as "EH8-A", who was her only source close to Ms Hurley. She said that, given the photograph of Ms Hurley and Mr Nayar together, she would have asked that source what they had heard about Ms Hurley's new boyfriend and how serious the relationship was. Her evidence was that the in-person interaction between Ms Hurley and Mr Nayar at a West London dinner party, that they had been dating for two months, that he had not yet been introduced to Hugh Grant, and the references to friends' views and Ms Hurley's caution about a new relationship after Steve Bing, would all have come from EH8-A.

495. Ms Lampert explained that she trusted EH8-A because the source moved in similar social circles to Ms Hurley, would have seen the couple together, and would have spoken to Ms Hurley's friends about the relationship. EH8-A would either have been at the dinner party in question or known someone who had been there. In cross-examination, Ms Lampert elaborated that EH8-A was a socialite, often at the same parties as she was, was known to others at the *Mail*, and was friends with one of Ms Hurley's good friends. She accepted the shorthand description that the sourcing of this Article was "*cuttings plus colour*" was not accurate, but she rejected the suggestion that "*colour*" meant something different from fact, saying that it was "*a bit of both*" and that anecdotal colour could include factual detail.

496. As to the material relating to Mr Nayar's family, background and finances, Ms Lampert's evidence was that she recalled using a stringer in India and speaking to him directly, and believed that this must have been for this story because it was the only time she had used a stringer in India. She said that the stringer managed to speak to Arun Nayar's mother and obtain the denial reported in the article that he was a rich playboy. She remembered being pleased with the quote. She did not now remember the stringer's name, but said he would have been sourced by the *Daily Mail*'s Foreign Desk, and she trusted him for that reason.

497. Importantly, Ms Lampert's evidence was that she did not remember using anyone else to help her on this article and would not have needed ELI for anything in it. More generally, while she accepted in her witness statement that she did use ELI, on occasion, during her time at the *Daily Mail*, she said that she used inquiry agents for telephone numbers, addresses and similar enquiries, and that she never asked them to obtain financial or medical information, or to hack phones.

498. In cross-examination, Ms Lampert was challenged specifically about two aspects of the Article. First, the statement that Ms Hurley and Mr Nayar had been dating for nearly two months, and, second, the statement that Mr Nayar had been introduced to Ms Hurley's son, Damian. It was suggested to her that the first might have been deduced from call data and the second discovered by voicemail interception. She denied both suggestions. As to the dating timeline, she said that she would not have used ELI for this story and that this sort of information could have come from the earlier reporting, from the source she had identified, or from speaking to Mr Nayar's mother.

499. As to the introduction of Damian to Mr Nayar, she said that the information could have come from the same source, from Mr Nayar's mother, or conceivably from other press reporting. When it was put to her that she had used ELI and voicemail interception to discover the private family meeting, her answer was: "*How would that have happened?*" followed by a clear denial.

500. During that cross-examination, Mr White objected that he had understood this to be a Burrows allegation. The Court then asked what the evidential basis was for the suggestion that Ms Lampert had obtained the dating information from call data relating to Ms Hurley and Mr Nayar. Mr Sherborne's answer was that the basis was propensity: namely, that Ms Lampert was a frequent user of ELI at the time and that, even though there was no ELI invoice for this article, ELI formed part of her modus operandi. It was accepted in that exchange that there was no ELI invoice said to be relevant this Article.

(c) The parties' submissions

501. The Claimants submit that the Article contained details which did not appear in the other reports relied upon by Ms Lampert, in particular that Ms Hurley and Mr Nayar had been dating for nearly two months, that they had gone on dates in New York, and that Mr Nayar had been introduced to Damian. They submit that Ms Lampert's reliance on a "*friend of a friend*" socialite source was implausible, particularly in light of Ms Hurley's evidence that the meeting between her son and Mr Nayar was a private family meeting. Based on that, and relying on Ms Lampert's general use of ELI at about this time, the Claimants invite the inference that Ms Lampert obtained relationship timing information from call data supplied by ELI and discovered the private family meeting by voicemail interception. They also criticised the absence of documentary

records, such as payment records to the source or emails evidencing communications with that source.

502. Associated submits that the Claimants' case as to this Article was never properly particularised. Associated points out that the original pleaded case relied only on an alleged propensity or *modus operandi* on Ms Lampert's part to instruct TPIs unlawfully, without identifying any actual instruction of ELI or any other TPI in relation to this article. It submits that any Burrows allegation had fallen away by trial, and that the unparticularised attempt in cross-examination to shift instead to allegations of call data or voicemail interception was unsupported by evidence. Associated submits that Ms Lampert gave a coherent and plausible account of the article's sourcing: namely, that it comprised material from earlier public reporting, social and relational detail from her confidential source EH8-A, and family/background material from an Indian stringer who had spoken to Mr Nayar's mother. Associated submits that her evidence should be accepted.

(d) Discussion and conclusion

503. I am not satisfied that Ms Hurley has proved UIG in relation to this Article. In my judgment, there are four short reasons for that conclusion.

504. First, there was no evidence to support the proposition that Ms Lampert instructed ELI, or any other third-party investigator, in relation to this Article. The original pleaded case advanced against her was one of alleged propensity to instruct TPIs to gather information unlawfully. But propensity, still less an unparticularised allegation of propensity, cannot itself establish that a particular article was sourced by UIG. There was no contemporaneous document, invoice, payment record or other evidence linking ELI or any other TPI to this Article.

505. Second, I do not consider that the Claimants were entitled, in cross-examination, to transform an unparticularised propensity case into a concrete article-specific allegation that Ms Lampert obtained call data from ELI or intercepted voicemail. Those were serious allegations. They were not pleaded, they were unsupported by any article-specific evidence, and I reject them.

506. Third, I accept Ms Lampert's evidence as to her source. Her account was that the Article was put together from three principal streams of material: (i) the public reporting then circulating about the relationship and about Mr Nayar; (ii) a confidential social source, EH8-A, who moved in Ms Hurley's social circle and could provide information of the kind that appears in the Article about how the relationship was perceived and spoken about socially; and (iii) an Indian stringer who spoke to Mr Nayar's mother and obtained the denial and background material concerning him and his finances. In my judgment, that is an inherently plausible explanation of the Article. It is, moreover, consistent with the nature of the article, which is a mixture of already-public relationship reporting, social anecdote, attributed friends' comments, and family/background material.

507. Fourth, so far as the Burrows point is concerned, the position at trial was plainly confused. Ms Hurley's case in relation to this Article had, at one stage, been associated with an allegation that Gavin Burrows had been the source of information about Mr Nayar. By the time of trial, however, that was no longer clearly pursued; and when

the matter was explored in cross-examination, the focus shifted instead to ELI, call data and voicemail interception. I do not regard that shifting presentation of the case as assisting the Claimants. Rather, it underscores the absence of a clearly evidenced and properly particularised UIG case in relation to this Article.

508. Drawing those points together, Ms Hurley has failed to demonstrate UIG in relation to Article (14). I accept Ms Lampert's evidence as to the sourcing of the Article. The claim in respect of this Article therefore fails.

(15) *"The smiley show – their marriage in turmoil, Sadie and Law play happy families for the camera"*: *Daily Mail* 5 February 2003 (Nicole Lampert)

509. This is the third Article relied upon by Ms Frost Law in her claim.

510. The Article was published in the *Daily Mail*, on 5 February 2003, under the headline "*The smiley show – their marriage in turmoil, Sadie and Law play happy families for the camera*", bylined to Nicole Lampert. It was a photograph-led follow-up piece reporting that, although Sadie Frost Law and Jude Law appeared smiling and united for the photographers as they left their home with their children, their relationship was in fact undergoing serious difficulties.

511. The information identified in the pleading as private information included that Ms Frost Law was "*suffering from post-natal depression*", that she had been prescribed "*both anti-depressants and sleeping pills*", that she and Mr Law had had "*a row the night before*", and that "*[t]he only thing they have agreed on at the moment is to do whatever's best for the children*."

(a) The issues

512. The issue is whether Ms Frost Law has proved that the private information published in the Article was obtained by UIG. Although the information was plainly private, the real issue at trial was whether the Claimant had established a mechanism of UIG by which it was obtained, or whether, as Ms Lampert claimed, the material came from Sharon Feinstein and a source close to Ms Frost Law.

(b) The evidence

513. In his witness statement, Jude Law said that the information in the Article was private (see [A2.510]). In relation to this Article specifically, he said: "*The information referring to Sadie being prescribed antidepressants and sleeping pills and the 'row the night before' is again very private and very specific*". He continued: "*Obviously then, the night before we weren't staying in the same place, and we would've exchanged voice messages*". He also said that, by this period, he was not sharing this sort of material "*willy-nilly*".

514. Nicole Lampert said in her witness statement that she did not recall writing the Article, but, having reviewed it, she considered it to be "*essentially a long picture caption*" and a follow-up to a *Daily Mail* story the day before. She said that, for this sort of story, she would normally be shown the photographs and might phone the photographer for eyewitness colour; and she also said that she would have looked at the earlier reporting about Sadie Frost Law and Jude Law.

515. Critically, Nicole Lampert's evidence was that: "*Some of the information in the article, including the information about Sadie taking anti-depressants and sleeping pills, was either already old news or almost certainly came from a freelance contact of mine, Sharon Feinstein*". She stated that Ms Feinstein had a very strong source in Sadie Frost Law's social circle or family and was able to get excellent information from that source. So, Ms Lampert said she would usually speak to her about Sadie Frost articles. Ms Lampert's evidence was that she knew the identity of Ms Feinstein's source, and she knew that the source was able to provide reliable information. She never had direct contact with the source, but Ms Feinstein had told her how the source knew the information. The quote from the source would not always be verbatim and Ms Lampert said that she felt she had some licence to shape what she was told into quotations capable of being fitted into an article

516. She added that, with a picture story like this, she would have called Ms Feinstein to ask her for anything additional to include in the article.

517. In cross-examination, Ms Lampert said that, if the sleeping pills material was not already in earlier reporting, she believed that she would have obtained it from Ms Feinstein. When she was asked what Ms Feinstein had told her about the source, she said: "*She told me who the person was, and, as Sadie has written in her witness statement, it is, as she suspected, someone very close to her, someone who was selling stories for money, and also I think probably had an interesting relationship with Sadie and her feelings towards Sadie*".

518. The allegation ultimately put to Nicole Lampert in cross-examination was not that Ms Feinstein had herself used unlawful methods, but that Nicole Lampert had done so, and had not obtained the information from Ms Feinstein. It was put to her: "*I suggest to you that you obtained this through listening in to voicemail messages, Ms Lampert?*" Her answer was: "*You're completely wrong*". In later cross-examination on another Ms Frost Law article, when it was put expressly, "*Are you alleging that I listened to voicemail messages?*", Mr Sherborne confirmed, "*Yes, Ms Lampert, I am*", and she replied: "*No, I did not, ever*".

(c) The parties' submissions

519. On behalf of Ms Frost Law, it was submitted that the information in the Article was highly private, and that the private and specific character of the information, together with Mr Law's evidence about voice messages, supported the inference that the information had been obtained by unlawful means, specifically voicemail interception. The Claimants' closing submissions relied, in particular, on the sleeping pills material and on the suggestion that the information could not genuinely have come from a legitimate source close to Ms Frost Law.

520. For Associated, it was submitted that there was no pleaded case identifying any mechanism of UIG in relation to information said to have come from Sharon Feinstein. In cross-examination of Ms Lampert, the case actually put was that the "*true source was voicemail interception*" for which there was no evidential basis. Associated also submitted, specifically in relation to this Article, that the allegation that Nicole Lampert listened to voicemails was made without notice, or evidence, and should be rejected

(d) Discussion and conclusion

521. I am satisfied that the information in this Article was private. That is clear from the face of the Article itself, and it is confirmed by Jude Law's evidence, which I accept, that the material about sleeping pills, the row the night before, and the parties' private handling of matters for the sake of their children was "*very private and very specific*". I also bear in mind, however, the limited extent of what Mr Law actually said: namely, that, because they were not staying in the same place, "*we would've exchanged voice messages*". He did not say that the sleeping pills information or the detail of the row was necessarily contained in any voicemail message.

522. I also accept Nicole Lampert's evidence that the story almost certainly came from Ms Feinstein. Her evidence in chief on this was clear and specific. She said that some of the information in the Article, including the information about anti-depressants and sleeping pills, "*was either already old news or almost certainly came from a freelance contact of mine, Sharon Feinstein*". She further explained that Ms Feinstein had "*a very strong source in Sadie Frost Law's social circle or family*"; that this was "*always the same source*"; that she knew who the source was; and that Ms Feinstein had told her "*how [the source] knew the information*".

523. I also accept Nicole Lampert's evidence that the sleeping pills aspect of the Article came from Ms Feinstein. In cross-examination, when the possibility of prior reporting was explored, she said she believed she had obtained it from Ms Feinstein. When asked what Ms Feinstein had told her about the source, she said that it was, as Ms Frost Law had suspected, "*someone very close to her*", someone selling stories for money. Importantly, no attempt was made to challenge in any specific way the evidence Ms Lampert gave as to the existence of this source and that person's proximity to Ms Frost Law. Instead, the case moved directly to the suggestion that the information had in truth been obtained unlawfully by Ms Lampert and not through Ms Feinstein.

524. This leads to the critical point about the progression of the allegation. There was no pleaded allegation identifying the mechanism of UIG. In cross-examination, the specific case put to Ms Lampert was that she, herself, had obtained the information by "*listening in to voicemail messages*". She denied that allegation. I accept that denial. I am not satisfied that there was any proper evidential basis for the allegation as it was put.

525. Drawing these matters together, I am not satisfied that Ms Frost Law has proved UIG in relation to this Article. The information was private, but I accept Ms Lampert's evidence that the story almost certainly came from Sharon Feinstein; I accept her evidence that the sleeping pills material came from Ms Feinstein; and I accept her evidence as to how she understood Ms Feinstein to have sourced the information. That evidence was not specifically undermined in cross-examination. The case actually put was a different one: that Ms Lampert herself had been listening to voicemail messages. I reject that allegation. It follows that Ms Frost Law has failed to demonstrate UIG in relation to this Article.

526. For those reasons the claim in relation to Article (15) will be dismissed.

(16) *"Harry falls for a girl from the Glossy Posse"*: *Mail on Sunday* 11 May 2003 (Andy Buckwell & Katie Nicholl)

527. This is the third Article relied upon by Prince Harry in his claim.

528. The Article was published in the *Mail on Sunday*, on 11 May 2003, under the headline "*Harry falls for a girl from the Glossy Posse*", bylined to Andy Buckwell and Katie Nicholl. In substance, it reported that Prince Harry was dating Laura Gerard-Leigh, described her as his "*first serious girlfriend*", stated that the relationship had been kept secret until they appeared together at the Badminton Horse Trials, and included further detail about her school, friends, family and alleged "*secret trips*" to see Prince Harry in Eton or Windsor.

(a) The issues

529. The information identified in the pleading as private information concerns Prince Harry's relationship with Laura Gerard-Leigh, including the fact of the relationship, its private or secret character, and the allegation that she was making "*secret trips*" to see him. The issue is whether Prince Harry has proved that this information was obtained by UIG. There is no pleaded mechanism of UIG specific to this Article. At trial, however, different unlawful mechanisms were put at different stages to different witnesses. That forms part of the context in which the evidential case falls to be assessed.

(b) The evidence

530. In his first witness statement, Mr Buckwell said that he remembered this Article clearly. His evidence was that, after a photograph of Prince Harry with an unidentified young woman appeared in a newspaper, which he identified as *The Sun*, a trusted source of his ("DOS3-A") telephoned him and said that the source recognised her. He said the source identified her as Laura Gerard-Leigh, said that her set was nicknamed the "*glossy posse*" and that she went to a girls' school in Wiltshire. Mr Buckwell said that he passed this information to Paul Field. He did not recall speaking to Ms Nicholl about the story or doing further "*legwork*" to stand it up beyond passing on the initial details volunteered by the source. He said that the source was known to him, had friends in common with Prince Harry and was a reliable source of information.

531. In his second witness statement, Mr Buckwell addressed the Claimants' later-pleaded propensity allegations concerning his earlier work at the *Sunday Mirror*. He again said that, so far as this Article was concerned, the tip came from his own known and trusted source, who had friends in common with Prince Harry and was well placed to know the information provided. He denied commissioning any of the pleaded TPIs, including Christine Hart or Jonathan Stafford, in relation to this Article.

532. Ms Nicholl addressed the Article in her first witness statement. She said that she did not recall the Article well and had been unable to locate any contemporaneous notes relating to it. She said that, because Mr Buckwell's name appeared first on the byline, she assumed that it was his tip that the woman Prince Harry had been photographed with was Laura Gerard-Leigh and that they were dating. She said that she presumed Paul Field passed on Mr Buckwell's tip and asked her to gather more details from her own contacts in Prince Harry's social circle, such as with whom Ms Gerard-Leigh was

friends, whom Prince Harry had dated previously and the fact that he had recently been seen out with other girls. She said that she used to go to the bars referred to in the Article and had contacts in that circle who could have been in a position to give information about the fledgling relationship, and that she might also have checked cuttings for background material. She denied any involvement of Gavin Burrows or other pleaded TPIs in relation to this Article.

533. In cross-examination, Mr Buckwell accepted that the earlier photograph in *The Sun* did not identify the young woman or describe her as being in a relationship with Prince Harry, and he accepted that the published Article contained additional detail beyond bare identification. He also accepted that the published copy referred to more than one source. However, when it was put to him squarely that private investigators or unlawful methods had been used to obtain the relationship information for this Article, and specifically that he had used Jonathan Stafford, Mr Buckwell rejected that proposition emphatically, maintaining that he did not use a private investigator for this story and that it came from a genuine source acquainted with Prince Harry's social circle.

534. There is no Article-specific documentary material linking this Article to any TPI, invoice, schedule, payment or other contemporaneous record suggestive of UIG. The case therefore depends upon inference.

535. I have set out in more detail my conclusions concerning Mr Buckwell's earlier work at the *Sunday Mirror* and the evidence relied upon by the Claimants as propensity material (see [A2.399]-[A2.410]). For present purposes, it is sufficient to record that I am satisfied on the evidence that Mr Buckwell did have a demonstrated propensity, during his period at the *Sunday Mirror*, to use and to have commissioned certain forms of UIG. But that is propensity evidence only.

536. I bear in mind the limits I have imposed on propensity evidence in this litigation, and the reasons for those limits (see [44]-[48] and [64]). Even where propensity is established against an individual, it cannot of itself prove wrongdoing on another occasion. At most, it may provide some support for an inference where other evidence, relating to the particular Article or incident, points in the same direction. It does not supply missing proof and cannot justify "*optimistic guesswork*" or inference upon inference reasoning.

(c) The parties' submissions

537. Prince Harry submits that the Court should infer UIG from the private character of the information in the Article, coupled with the propensity case advanced against Mr Buckwell by reference to his earlier work at the *Sunday Mirror*. His case was that the Article went beyond what was publicly known from the photograph and that the additional detail about a secret relationship and secret meetings was unlikely to have been obtained lawfully. In relation to Mr Buckwell, the allegation put was that the relationship information had been obtained through private investigators and, specifically, through the use of Jonathan Stafford.

538. Associated submits that the claim fails because there is no pleaded mechanism of UIG in relation to this Article and no Article-specific evidence of any unlawful method. It further submits that the case advanced at trial changed between the evidence of Mr Buckwell and that of Ms Nicholl, with different unlawful mechanisms being put to

the two witnesses, and that this shifting presentation of the case underlines the lack of a coherent evidential basis for the inference sought. Associated relies on Mr Buckwell's account of the genesis of the story and on the absence of any Article-linked documentary connection to a TPI.

(d) Discussion and conclusion

539. I am not satisfied that Prince Harry has proved UIG in relation to this Article.

540. Although I have found that Mr Buckwell had a demonstrated propensity, during his period at the *Sunday Mirror*, to use certain forms of UIG, that cannot of itself prove wrongdoing on another occasion. At most, such evidence may provide some support for an inference where other evidence, relating to the particular Article, points in the same direction. It does not supply missing proof and cannot justify inference-upon-inference reasoning.

541. In my judgment, the evidence relating specifically to this Article does not support the drawing of an inference that it was the product of UIG. I accept Mr Buckwell's evidence as to the genesis of the story. He gave a clear account that, following the publication of the photograph in *The Sun*, he was contacted by a trusted source who identified the young woman as Laura Gerard-Leigh and provided the "*glossy posse*" description and the school/town detail. I also accept his evidence that he passed that information to Paul Field and that he did not use a private investigator for this story.

542. The fact that the published Article contained additional detail beyond the identifying information does not justify the inference that those details must have been obtained unlawfully. Mr Buckwell accepted, realistically, that the copy cited more than one source and that he could not now say, with certainty, which particular additional details came from his original source as distinct from other inputs. That does not undermine the central core of his account. Nor does it provide any positive evidential basis for finding that any private investigator was used.

543. I also accept Ms Nicholl's evidence, so far as it bears on this Article, that if she made any contribution, it was likely to have been by gathering additional social and background detail from her own contacts in Prince Harry's social circle and/or from cuttings. There is no documentary or other Article-specific evidence linking her, or Mr Buckwell, to any TPI, invoice, payment or other contemporaneous material capable of supporting a finding of unlawful acquisition.

544. I also take into account the shifting nature of the Claimants' case at trial. The allegation advanced in the cross-examination of Mr Buckwell was that he had used private investigators and, specifically, Jonathan Stafford. The case put in relation to Ms Nicholl was framed differently. That shifting presentation is not, of itself, determinative. But it does underline the absence of any coherent, Article-specific evidential route by which the Court could conclude, on the balance of probabilities, that the information in this Article was obtained by UIG.

545. I accept Mr Buckwell's evidence about the sourcing. In cross-examination, Mr Buckwell accepted that the published copy included the "*secret trips*" detail and that he could not now be certain of the precise extent of the information provided in the original call. However, he did not disavow that detail as outside the scope of his source.

Rather, he said it was possible that his source mentioned the weekend visits and, when pressed, that this was the sort of information his source had provided, albeit that he could not be "*100% sure*" given the passage of time. In those circumstances, I am satisfied that it is more likely than not that the "*secret trips*" element was supplied by the source identified by Mr Buckwell. Certainly, that is more likely than the Claimants' contention that this element of the story was obtained by UIG. The Claimants did not identify any specific UIG mechanism by which the "*secret trips*" detail could have been obtained. Rather, they invited the Court to infer UIG from the asserted privacy of the information combined with propensity and context. For the reasons explained above, that is insufficient.

546. Standing back, I am not persuaded that the evidential picture goes beyond suspicion. The Article may well have contained private and socially sensitive information. But the Court must decide whether Prince Harry has proved, by evidence and proper inference, that the information was unlawfully obtained. In relation to this Article, he has not done so.

547. For those reasons, the claim in relation to Article (16) will be dismissed.

(17) *"Welcome to the Sadie & Jude show"*: *Daily Mail* 19 July 2003 (Alison Boshoff)

548. This is the fourth Article relied upon by Ms Frost Law in her claim.

549. The Article was published in the *Daily Mail*, on 19 July 2003, under the headline "*Welcome to the Sadie & Jude show*", bylined to Alison Boshoff. It was a long feature article about the breakdown of Ms Frost Law's marriage to Jude Law. It reported, among other things, that Ms Frost Law had been confiding to friends that Mr Law's attitude to her was now one of "*cold dismissal*", that he treated her "*like she's nobody now*", that he had referred to her as "*empty and shallow*" during an argument, that she felt he had given up on the marriage too quickly, that legal papers had arrived on her birthday and had reduced her to tears, and that, although outwardly trying to put on a brave face, she had in private been driven to the brink by the end of the marriage. It also contained further detail about the parties' living arrangements, the alignments and divisions among friends, and Ms Frost Law's state of mind as she adjusted to the separation.

(a) The issues

550. The information identified in the pleading as private information concerns Ms Frost Law, her relationship with Mr Law, and information about her feelings and her communications. The issue is whether Ms Frost Law has proved that this information was obtained by UIG. There is no pleaded mechanism of UIG specific to this Article. At trial, however, an allegation of UIG was ultimately put to Ms Boshoff in the witness box in a rolled-up form, after the Court intervened to require clarification of what, precisely, was being alleged. That forms an important part of the context in which the Article falls to be assessed.

(b) The evidence

551. In her witness statement, Ms Boshoff said that she did not remember this Article at all and had no reason it would have stuck in her mind. She said that, by the date of

publication, she was not an Associated employee but a freelancer working from home while caring for a young child. She explained her general working practices as a freelance features writer. These involved consulting cuttings through the online cuttings library, reading what had already been published about the relevant person or subject, making calls to contacts and, where appropriate, speaking to publicists or lawyers and giving a right of reply if she had anything new. She described this kind of article as a "*Daily Mail version*" of a story already in circulation elsewhere: a more contextual and discursive feature piece for *Daily Mail* readers, which did not need to contain wholly new material.

552. Specifically in relation to this Article, Ms Boshoff said that most of the information in it was already in the news and that she would have read everything she could find that had recently been published about Sadie Frost and the breakdown of her marriage. She identified several recent articles she thought she would probably have read, including material in the *Daily Mirror*, the *Evening Standard*, the *News of the World* and *The Sun*. In her witness statement, Ms Boshoff said that it was "*absolutely possible*" that the Article was based entirely on cuttings, depending on how quickly she had been commissioned and the time available to research and write the article. At the same time, she said that, in this case, it was likely that she would have spoken to a source to add colour to the story. She said that she had a confidential source who was friendly with a good friend of Sadie and Jude and who was generally the person she went to with a "*Primrose Hill*" story of this sort. She said that she trusted this source because she had known the person since their twenties and because, for stories concerning the Primrose Hill set, the source had always provided reliable information, and she knew how good the source's contact was.

553. Ms Boshoff said that she did not think it at all likely that she had commissioned a third party or a freelancer in relation to this Article. In the past she had commissioned search agents for an address, but she said there was nothing in this Article that suggested door-knocking and, as a freelancer at the time, she was not in a position to commission private investigators, search agents or other freelancers except via the desk, which she had no recollection of doing.

554. In cross-examination, Ms Boshoff accepted that not all of the information in the Article could be traced directly to the cuttings put to her. She accepted that some of the passages identified in cross-examination were not found expressly in the previous reports. She accepted, for example, that the statements that Mr Law's attitude to Ms Frost Law was now one of "*cold dismissal*", that he treated her "*like she's nobody now*", that she was no longer in the mood to "*suffer in silence*", that the legal papers arriving on her birthday reduced her to tears, and that she regarded the separation as a "*healing*" time, were not all expressly replicated in the cuttings. She also accepted that, in the light of the text of the published Article, her statement that it was "*absolutely possible*" that it had been based entirely on cuttings was not right in this case, and that, having read the article carefully in preparation for trial, she did not think it had come purely from cuttings.

555. At the same time, Ms Boshoff maintained that the Article was still very much in the same territory as the previous reporting and that much of it was "*in the same ball park*" or "*all in the same world*" as what had already been circulating about Ms Frost Law's relationship, the breakdown of the marriage, her jealousy over Mr Law's connection with Nicole Kidman, and the public and private tensions between them. She also

maintained that, to the best of her recollection, the Article was sourced in the ordinary course of legitimate journalistic enquiry from a confidential source of the kind she identified in her witness statement.

556. In the course of cross-examination, attention was also directed to Ms Boshoff's historic dealings generally with various TPIs, including Steve Whittamore, Christine Hart and Jonathan Stafford. Ms Boshoff accepted that she had used Jonathan Stafford for addresses and phone numbers and that, in relation to Christine Hart, she accepted that Ms Hart did on occasions make pretext calls to verify whether an event was taking place. She did not accept, however, that she had used any of these individuals in relation to this Article. Nor was there any Article-specific documentary material linking this Article to any instruction, invoice, schedule, payment or other contemporaneous record suggestive of UIG.

557. What was ultimately put to Ms Boshoff in cross-examination was not a pleaded specific case that the information in this Article had come from any identified TPI or any identified unlawful act. Rather, after the Court intervened to require clarification, the rolled-up allegation ultimately advanced was that the private information in the Article had been obtained unlawfully either through a pretext call, in which the information and the quotations were obtained, or by voicemail interception, either by Ms Boshoff herself or by some unidentified third party acting on her behalf. Ms Boshoff's denial was emphatic. She said:

> "Well, those are two very serious things to say. I've never hacked a phone, I have never asked anyone to hack a phone, I've never been asked to hack a phone, and I completely reject that I would have anything to do with that. It's not who I am, it's not who the Daily Mail are, so that's a no.
>
> The other suggestion was that somebody got those quotes via a pretext call to Sadie Frost. I can't imagine the pretext call that would lead to somebody sharing the details of their divorce with someone who's pretending to be arranging a milk delivery. I mean, that's just absurd. Also, no. Briefly, no to both."

(c) The parties' submissions

558. On behalf of Ms Frost Law, it is submitted that the information in this Article was private and was not legitimately obtainable from a source close to her. The Claimants rely on Ms Frost Law's written evidence that at the relevant time she was confiding privately to close friends, often by voicemail, and that she kept these matters quiet because she was proud and did not want to admit publicly what was going on. They submit that the Article included detailed private information about her feelings, her account of Mr Law's attitude to her, her reactions to receiving legal papers on her birthday, her emotional state, and the state of alignments within the Primrose Hill circle, and that this information was not likely to have been known beyond a very restricted group.

559. Ms Frost Law submits further that Ms Boshoff's explanation of sourcing was unsatisfactory. She points to the fact that she could not remember the Article; that her witness statement said it was "*absolutely possible*" the Article was based entirely on cuttings, which she accepted in cross-examination was not right in this case; that the source she speculatively identified in evidence was described as a friend of a good

friend of Sadie and Jude, which, she submits, does not correspond to the published attribution to "*one in her camp*" or "*a friend*"; and that, in Ms Frost Law's submission, there is therefore no substantial evidence before the Court as to how the Article was sourced. It is also argued that Ms Boshoff historically used private investigators, including Hart, Stafford and Whittamore, and that this furnishes context for an inference that the Article was fed by unlawful methods, in particular a blag call and/or voicemail interception by a private investigator acting for her.

560. For Associated, it is submitted that the claim fails because there is no pleaded mechanism of UIG in relation to this Article and no Article-specific evidence of any unlawful method. Associated submits that the evidence showed that Ms Boshoff's best account of sourcing was that the Article was prepared from a combination of cuttings and information from a confidential source. It submits that the existence of such a source was not challenged; that Ms Boshoff's evidence about the source was that the person was well placed to learn information circulating within the relevant social circle; and that there is nothing surprising in information shared confidentially by a celebrity with one or more close friends spreading, directly or indirectly, beyond that immediate circle. Associated also points out that Ms Frost Law's evidence was not that she spoke only to the three individuals identified in cross-examination, but that she regularly confided in them.

561. Associated further submits that a great deal of the content of the Article was in the same territory as contemporaneous reports already in circulation and that, even if not every piece of detail can be tied exactly to specific cuttings, that does not begin to establish UIG. It submits that the Claimants' attempt to found a case on Ms Boshoff's historic use of Hart, Stafford and Whittamore is an impermissible back-door attempt to run a general use propensity case which was not pleaded in a properly article-specific form and does not assist in the determination of this Article. Most importantly, Associated submits that what was ultimately put to Ms Boshoff was an unpleaded and rolled-up allegation that she herself had hacked voicemails, made pretext calls, or procured some unidentified third party to do either, without any evidential foundation and without prior notice. It submits that this was not a proper basis on which to accuse a witness of serious and criminal conduct and that Ms Boshoff's denial should be accepted.

562. Associated submits that Ms Frost Law has not discharged the burden of proving that this Article was the product of the unlawful acts put in cross-examination and that the claim should therefore be dismissed.

(d) Discussion and conclusion

563. I am not satisfied that Ms Frost Law has proved UIG in relation to this Article.

564. I accept Ms Boshoff's evidence. Although she had no specific memory of writing the Article, that is unsurprising given the passage of time and the volume of journalism she produced. Her evidence about how this sort of article would have been prepared was coherent and rooted in her general working practices as a freelance features writer. Importantly, I accept her evidence that she had a confidential source of the kind identified in her witness statement and that such a source was likely to have been consulted for a "*Primrose Hill*" story of this kind. I also accept her evidence that she did not use any private investigator or other third party in relation to this Article.

565. It is true that not every element of the published Article can be mapped neatly onto previously published cuttings. Ms Boshoff accepted as much. It is also true that there was a dispute in closing as to the extent to which the details had already appeared in previous publications. But the inability to trace every detail in the Article to an identified prior report does not provide a sufficient basis, in the context of the evidence as a whole, to infer UIG. Some details may have come from cuttings; some may have come from the confidential source Ms Boshoff identified; some may have reflected the kind of synthesis and contextualisation characteristic of the feature writing she described. None of that leads, without more, to the conclusion that the information was unlawfully obtained.

566. I also accept Associated's submission that the allegation of UIG ultimately put to Ms Boshoff was unpleaded and rolled up in a highly general way. The case that the information was obtained by voicemail interception or by a pretext call, whether by Ms Boshoff herself or by an unidentified third party acting on her behalf, was not a case that had been clearly articulated beforehand. It emerged only after the Court required clarification of what was being alleged. These were serious allegations of criminal conduct. No article-specific evidential foundation was put to Ms Boshoff when they were made. I accept her denial. In my judgment, it was convincing. Her response was firm, specific and inherently plausible. I also accept her point that the suggestion of obtaining these quotations by a pretext call to Ms Frost Law was, in the circumstances of this Article, absurd.

567. Nor do the historic dealings with Hart, Stafford and Whittamore provide a sufficient basis on which the Court can draw the inference sought. There is no Article-specific documentary material linking this Article to any of them. The fact that Ms Boshoff accepted historic dealings with Hart and Stafford, and the possibility that her name or her department appeared in connection with Whittamore material, does not prove that any of them were used for this Article or that the information in it was obtained unlawfully. To reason from such general material to a conclusion that Ms Boshoff or someone acting for her blagged Ms Frost Law or intercepted voicemails in connection with this specific publication would be to engage in precisely the kind of inference-upon-inference reasoning that the Court must avoid.

568. Standing back and having regard to the totality of the evidence, I am not persuaded that the Claimants' case goes beyond suspicion. The Article plainly contained private and sensitive material about the breakdown of the marriage. But suspicion is not enough. I accept Ms Boshoff's evidence, including her evidence that she had a confidential source, and I am not satisfied that Ms Frost Law has proved that the information was obtained by UIG.

569. For those reasons, the claim in relation to Article (17) will be dismissed.

(18) Information concerning Ms Frost Law's pregnancy: October 2003 (Katie Nicholl)

570. This incident concerns a draft article, written by Katie Nicholl, on or around 4 October 2003, concerning Ms Frost Law and an ectopic pregnancy.

571. The draft article is a detailed and highly intrusive account of Ms Frost Law's alleged ectopic pregnancy, stating that she had been treated at St John and Elizabeth Hospital, had undergone a minor operation to remove the foetus, had been in and out of hospital

on the same day, and that the pregnancy was unintended notwithstanding contraception. It also stated that Jackson Scott flew from Spain to comfort her, attributed further intimate detail to "*a friend of Jackson Scott*", and included the additional point that Sadie Frost Law had told Jude Law about the pregnancy, together with a suggested worsening of relations between them. At the same time, the draft expressly recorded that Sadie Frost Law had told the *Mail on Sunday* the previous night that she was not pregnant. The draft Article contained very specific private medical and personal information some of which was attributed to unnamed sources. The draft article had been written up for possible publication notwithstanding the contemporaneous denial from Ms Frost Law recorded within the draft itself.

572. Ms Frost Law's pleaded case is that, in or around September and early October 2003, Katie Nicholl of the *Mail on Sunday* obtained highly private information about her which did not result in publication but nevertheless constituted a misuse of her private information. The pleaded information comprised that she was pregnant by Jackson Scott; that she underwent a medical procedure to remove the foetus; that she was treated at St John and Elizabeth Hospital; that she was distressed by what had happened; that Jackson Scott flew from Spain to comfort her; and that the pregnancy was unintended. It is pleaded that this information was obtained by Ms Nicholl no later than about 4 October 2003.

573. The pleaded case is that this information was obtained through unlawful information-gathering, namely voicemail interception and/or the blagging of itemised phone billing data and/or medical records. The pleading says that these are the best particulars Ms Frost Law can give, while accepting that she cannot identify the precise mechanism or exact timing of the misconduct. In support of that inference, Ms Frost Law pleads the inherently private and sensitive nature of the information, including its medical and sexual character; that she did not provide it to Ms Nicholl; and that it was not publicly available and could not otherwise have been obtained lawfully either from her or from the hospital.

574. The pleading then relies on several surrounding matters said to support that inference. It alleges that, at around the same time, Ms Nicholl had obtained and recorded private telephone numbers for people associated with Ms Frost Law and the pregnancy, including Jackson Scott, Charlotte Scott, Ben Jackson and Holly Davidson. It further pleads that, by late September or early October 2003, Ms Nicholl had commissioned Steve Whittamore to carry out enquiries including blagging, an occupancy search of the Steeles Road address and the obtaining of ex-directory and/or mobile numbers, and that two ELI payments dated 7 October 2003 in Ms Nicholl's name are to be inferred to relate to blagging private medical information. Finally, the pleading relies on the reference to "*Susie*" in Ms Nicholl's notes as an inference that Susie Mallis of ELI provided the unlawfully obtained medical information, and pleads that Ms Nicholl then used the information to draft, on or about 4 October 2003, an unpublished article concerning the episode.

(a) The issues

575. This pleaded incident is not tied to a published article, but is advanced as a separate "*Unlawful Episode*" concerning information about Ms Frost Law's pregnancy in October 2003, including, in particular, information recorded in Ms Nicholl's notebook concerning an ectopic pregnancy and treatment said to have taken place at St John &

St Elizabeth Hospital. The issue is whether Ms Frost Law has proved, on the balance of probabilities, that this information was obtained by Associated by UIG.

576. More specifically, the questions raised by the evidence are whether the notebook entries record private information that had been obtained by unlawful means; whether the contemporaneous Whittamore invoice and ELI ledger entries can properly be linked to the obtaining of that information; whether Mr Dillon's evidence assists in connecting the episode to the *Mail on Sunday* news desk or, conversely, supports Associated's case that no unlawful medical blagging would have been authorised; and whether the material permits the drawing of the inference for which the Claimants contend.

(b) The evidence

577. After the draft Article itself, the documentary starting point is Ms Nicholl's transcribed notebook entries relevant to the story.

578. The first entry relevant to the draft Article, marked "*Sadie Frost*", records the following information (faithful to the original text):

> "Had some note re: Ultrascan. Yes, she is having that kind of treatment.
>
> She went for an ultra-sound
>
> She is pregnant
>
> Dr Geoffrey Lloyd – had a letter about
>
> "She's been having that kind of treatment". She is pregnant – So I'll sned the letter out to you
>
> "Yes. I got a letter about that the other day"
>
> checked Portland brought up the Princess Grace Hospital (March 2003)
>
> She was recently treated/in March Aug. 6 saw psychologist Dr. Jenniffer Gumbourne"

To the left of these entries there is a marginal note which Ms Nicholl had transcribed as "*Susie*".

579. In her first witness statement, Ms Nicholl said that this page of her notebook reflected conversation(s) with Sharon Feinstein, who, she said, was the source of the story, and that, although the notes might appear to suggest she was speaking to a doctor, she was "*quite sure*" that she had not spoken to any medical practitioner while trying to stand the story up. She said that Ms Feinstein had excellent sources close to Sadie Frost Law and that the detailed information, including the reference to a medical letter, came from her.

580. In her second witness statement, she addressed the allegation that the marginal note "*Susie*" referred to Susie Mallis of ELI. She said that she did not recall anyone called Susie Mallis; that when she first looked at the notes she thought the word might read

"*Susie*"; but that, on reviewing them carefully, she thought it more likely to read "*Sadie*", while accepting that the writing was unclear and could be either.

581. In cross-examination, it was put to Ms Nicholl that she had herself approved the transcription reading "*Susie*", that only after the Claimants amended their case to allege that "*Susie*" was Susie Mallis of ELI had she retreated from that position, and that the note therefore tied the page directly to a "*medical blag*" by ELI. It was further put to her that the content of the page, including the references to Dr Geoffrey Lloyd, the two quoted passages and the check of Portland Hospital, was a real-time record of someone being told what appeared in Sadie Frost Law's medical notes. Katie Nicholl rejected that case. She said that she had always been uncertain whether the marginal word was "*Susie*" or "*Sadie*"; that she had discussed that uncertainty when reviewing her notebooks; that she did not recall speaking to a Susie about the story; and that, in her view, the page was a note of a conversation with Sharon Feinstein. She denied that she had asked anyone to blag medical information and said that the detailed medical references reflected that Sharon Feinstein had either had sight of a letter or been told about it by a source close to Sadie Frost Law. She accepted that it was highly private and detailed medical information, but denied that it had been obtained by any medical blag commissioned by her. She also described the note as confused, written down in live time and in a hurry, and said that she could not be precise, after so many years, about every part of it, including the "*checked Portland*" reference.

582. The next relevant page of the notebook records details relating to Jackson Scott: his age, that he lived in Seville, Spain, the identity of his mother, and a Spanish telephone number. The same page records a mobile telephone number for Sadie Frost Law.

583. In her first witness statement, Katie Nicholl said that these notes showed that she was trying to speak to people close to Sadie Frost Law and Jackson Scott in order to stand the story up. In cross-examination, it was put to her that the foreign and mobile numbers had been supplied by one of her enquiry agents. She accepted that the number for Jackson Scott in Spain probably had come with some assistance, because she would likely have needed help obtaining foreign numbers. She also accepted that, while Sadie Frost Law's mobile number might have come from a contact, the notes showed she was trying to contact various people around Sadie Frost Law and Jackson Scott as part of trying to stand the story up.

584. Immediately following this entry, the notebook records: "*It has to be made up. The doctor wouldn't write a letter. The whole thing is ridiculous. It's absolutely not true as far as I know. I haven't seen a letter*". To the right of those words appeared:

> "Lloyd Ben Jackson
>
> [Holly Davidson]
>
> [a UK mobile telephone number]
>
> [Holly Davids]
>
> [a further UK mobile telephone number]".

585. In cross-examination, it was put to Katie Nicholl that the "*Lloyd*" reference was a reference to Lloyd Hart of ELI, that ELI had been instructed to obtain mobile numbers

for Holly Davidson and Ben Jackson, and that the two numbers may have been derived from call-data work but not correctly attributed. It was also put to her that the words on the left-hand side were the response she received when she put the "*letter*" allegation to one of those individuals, most likely Holly Davidson. Ms Nicholl said that she did not recall speaking to Lloyd Hart on the story or commissioning any call-data work. She accepted that the notes showed she was trying to obtain contact details and put the story to relevant people, and that the words on the left-hand side appeared to be the response of either Ben Jackson or Holly Davidson, most likely the latter. She said that, if ELI was used on the story, it was for contact details so that she could put the story to those concerned; not for medical blagging.

586. Later notebook entries record a direct call from Ms Nicholl to Sadie Frost Law: "*I'm not pregnant. People just start rumours. My friends are gossiping about me and it's just not true.*" And, apparently in response to the noted question "*Have you been preg. In the last 12 weeks*", the notes continue: "*It's nobody's business whether I am or not/haven't been pregnant in the last few months. It's Private anyway! You will probably be getting a call from my lawyers.*" The notes then continue: "*On ultra scan: - 'It's not one's business. It's a private issue.'*"

587. In cross-examination, it was put to Ms Nicholl that this showed her putting highly intrusive medical questions directly to Sadie Frost Law in an attempt to secure confirmation of the pregnancy and to stand up information she had already obtained from unlawful sources. Ms Nicholl accepted that asking whether Ms Frost Law had been pregnant in the previous 12 weeks was an intrusive question, and she accepted that she had also put to her the ultrasound information. Her answer, however, was that she was doing what a journalist was required to do: putting the story to the subject and giving her an opportunity to respond. She maintained that she had not obtained the information by medical blagging and that what she put to Sadie Frost Law was information she had been told by her source.

588. Ms Frost Law, for her part, said that she remembered being contacted by the *Mail*, that she was shocked and upset, that she cannot remember her precise words, but that she ended the call quickly, either by hanging up or telling the journalist to speak to her lawyer, and that she did not provide any information.

589. On the next page of the notebook, to the left of Sadie Frost Law's name, appears: "*Found out about Ectopic pregnancy beginning of last week. She's very angry with herself. They were using condoms. St. John + Eliz (took a tablet to flush it out) [And] was treated there and was out in an hour. Jackson has flown over to be with her*". On the same page, next to the initials "*J.S.*" (apparently Jackson Scott) appears: "*I had no idea – I don't know anything about this!*" And next to "*Sadie*" appears: "*I don't want to talk to you about this. It's just not true. Don't mean to be rude – I think someone's winding you up. going to get my lawyers to call*".

590. In her first witness statement, Ms Nicholl said that the draft Article about the ectopic pregnancy likely came from Sharon Feinstein, that the payment record for "*Sadie's ectopic pregnancy*" pointed to Ms Feinstein as the source, and that the notes recorded both what Ms Feinstein had told her and her own attempts to speak to those around Sadie Frost Law and Jackson Scott. In cross-examination, it was put to her that this page was not a source note from Ms Feinstein, but a report of information obtained through voicemail interception, especially now that she had mobile numbers for Sadie Frost

Law, Jackson Scott and others around them. Katie Nicholl rejected that allegation emphatically. She said that this was, she believed, a subsequent conversation with Ms Feinstein, after she had gone back to the original source for more detail once earlier attempts to stand the story up had proved unsuccessful. She said, in terms, that she had never intercepted voicemails, never asked anyone else to do so, and did not believe that Ms Feinstein had done so either. She maintained that the information had been relayed from someone very close to Sadie Frost Law, to Ms Feinstein, and then to her.

591. The same cross-examination also addressed the draft article itself. The article attributed some of the detail to "*a friend of Jackson Scott*". It was put to Ms Nicholl that no friend of Jackson Scott had told the *Mail on Sunday* that information; that the attribution was false; and that it was used to disguise the true, unlawful source of the information. Ms Nicholl accepted that, if her present recollection was correct that the information came from Ms Feinstein, then the attribution in the draft was not literal. She said that she believed she had written it that way in order to distance the source from Ms Frost Law and protect the source. She denied that the attribution was used to disguise voicemail interception or any other unlawful means. She also accepted that, by the time the draft was written up, the article included Sadie Frost Law's denial, but said that the story was not ultimately published because there had been denials from Ms Frost Law, Jackson Scott and others, because it was a deeply sensitive medical story, and because lawyers became involved. She said that there had been an editorial decision not to run it.

592. The surviving JJ Services/Whittamore invoice is dated 5 October 2003, for the week ending 5 October 2003. It records a series of enquiries ascribed to Katie Nicholl and includes an item "*Occupant search; 33 Steeles Road, NW3 4RG … Frost/Law. Line x 2*". There is a further item marked "*PO blag*". The total invoice is for £799. In cross-examination, it was put to Katie Nicholl that "*line*" was Steve Whittamore's term for ex-directory searches and that, by this date, she was repeatedly using him for ex-directory numbers, including in relation to the Frost/Law family. Ms Nicholl accepted that, if she was obtaining a number, it was likely to have been a number she could not obtain herself and that, for this story, she was trying to reach a number of people including members of Sadie Frost Law's family. She accepted that she used Steve Whittamore on occasions and had, over time, used him for ex-directory numbers, but denied believing at the time that he was acting unlawfully. Her evidence was that, if a number was being obtained, it was for the purpose of putting the story to the relevant parties.

593. As I have noted, the same invoice also contained a separate item charged at £100 and described as "*PO blag*" (underneath a separate item "*Area search; Grossman, London x2*"). In her first witness statement, Ms Nicholl said that, although she was aware in general terms what "*blagging*" meant, she did not know what "*PO*" referred to. She maintained that the only thing she would have asked Mr Whittamore to do was to obtain telephone numbers and/or addresses so that the story could be put to those concerned. In the cross-examination, Mr Sherborne put to Ms Nicholl that she had asked him to blag the Post Office to obtain information about Mr Grossman. Ms Nicholl said she did not know to what "*PO blag*" referred and said it was "*completely untrue*" that she had asked Mr Whittamore to blag information for her. She maintained that she only ever asked Mr Whittamore to get an address or telephone number for her.

594. The ELI purchase ledger for the *Mail on Sunday* records, on 7 October 2003, three entries described as "*SEARCHES*", including one expressly naming "*K NICHOLLS SEARCHES*", together with a further entry on the same date naming "*KATIE NICHOLLS URGENT ENQ*". These entries are relied upon by the Claimants as linking Ms Nicholl, ELI and the October 2003 episode. In her second witness statement, Katie Nicholl accepted that the entries were in her name but said that, if she had commissioned the searches, they would have been for phone numbers and addresses, or possibly had been requested by someone on the News Desk for one of her stories. In cross-examination, it was put to her that one ELI instruction was the "*medical blag*" reflected in the "*Susie*" note and that the second was the obtaining of mobile numbers and call data reflected in the notes recording "*Lloyd*", Ben Jackson and Holly Davidson. She rejected that case. Her evidence was that, so far as the ledgers showed ELI had been used on the story, that was for obtaining contact details to put the story to the relevant people; not for blagging medical information or obtaining call data.

595. Ms Frost Law's own evidence about the underlying events was that, in around September 2003, she became pregnant unexpectedly only a few months into her relationship with Jackson Scott. She said that she was really concerned and embarrassed, that she thought she confided only in Jackson Scott and perhaps her close friend Zoe, and that she did not even share the matter with her mother or sisters. She said that she underwent a very private medical procedure at St John and Elizabeth Hospital because there were complications and she was told it was an ectopic pregnancy. She said that Jackson Scott travelled over from Spain to support her, that she did not believe her doctors or Jackson Scott would have leaked anything, and that she was very careful not to talk about it. She also said that she believed she saw Dr Geoffrey Lloyd in 2003, but not about the pregnancy, and that she could not remember seeing Dr Jennifer Gumborne.

596. In her third witness statement, she also said more generally that, in the relevant period, she was a heavy user of voicemail and that private medical matters were among the sorts of information left in voicemails.

597. The significance of the notebook entries and of Katie Nicholl's explanation of them therefore falls to be assessed in the context both of the highly specific and intimate information recorded in the notes and of Ms Frost Law's evidence that the underlying events were kept tightly private and that, when approached by Ms Nicholl, she gave no information.

598. In his witness statement, David Dillon explained that, from August 2001, he worked at the *Mail on Sunday* first as Deputy News Editor and then, from September 2007, as News Editor, and that the News Desk and Diary were separate sections, although tips could be passed between them and, where copy had already been checked and verified by the News Desk, the Diary would not need to check the information again. He also explained that, in the early 2000s, journalists, himself included, sometimes used search agents to obtain addresses, ex-directory numbers, friends-and-family lists, and related locating information, and that he regarded search agents as a shortcut for getting contact details quickly.

599. Mr Dillon further stated that it was only in 2004, when he was interviewed by police in connection with Operation Glade, that he learned that the methods used by Steve Whittamore for certain searches were unlawful. He drew a distinction between locating

information and medical information, stating that even in the early 2000s he would have regarded obtaining medical information or bank records by deception as in a different category because that material was "*off limits and private*", and he said that he had never blagged for medical information or instructed anyone else to do so, and that if a reporter or search agent had suggested doing so he would have said "*no*".

(c) The parties' submissions

600. Ms Frost Law submits that the notebook entries and draft Article provide a striking contemporaneous record of the obtaining and intended exploitation of private medical information of the most intimate kind. The notes, she submits, record not merely gossip or general rumour, but a sequence of highly specific matters: an ectopic pregnancy; the hospital at which treatment was said to have occurred; the nature of the treatment; the suggestion that she was "*out*" quickly afterwards; her emotional reaction; the reaction of others; and the detail that Jackson Scott had flown over to be with her. The draft article then reproduces, in substantially the same form, that core information and would have published it in a detailed and intrusive way.

601. In oral submissions, the Claimants emphasised that all of the information in the draft Article was said to be exclusive and concerned an extremely distressing and private episode in Ms Frost Law's life. They relied in particular on the fact that the Article contained specific information that she had suffered an ectopic pregnancy, had been treated at the St John and Elizabeth Hospital, had undergone a procedure to remove the foetus, had been in and out of hospital quickly, and had told others that the pregnancy had been unintended. The Claimants also submit that the draft itself records that Ms Frost Law denied being pregnant, but that the story was nevertheless being pursued for publication.

602. The Claimants submit that the contemporaneous documents link this private information directly to UIG. First, they rely on the Whittamore material, in particular the work-list/invoice for the week ending 5 October 2003, which identified Katie Nicholl as the commissioning journalist, referred to "*blag*" work, included an occupancy search relating to the Steeles Road address, and recorded "*Line x 2*" in relation to Frost/Law. They submit that this shows Ms Nicholl was actively using Whittamore against Ms Frost Law and those around her at the relevant time.

603. Second, they rely on the two ELI ledger entries dated 7 October 2003, disclosed late from what Mr Sherborne described in oral closing as "*Pandora's box*", both expressly naming Katie Nicholl, one for "*SEARCHES*" and one for an "*URGENT ENQ*". The Claimants' submission is that those entries are not to be read in isolation: they are to be linked to the notebook entries and to the draft Article, and, once so linked, they provide a direct contemporaneous connection between Ms Nicholl's commissioning of ELI and the obtaining of the private information in issue.

604. The Claimants further submit that the notebook itself shows how the unlawfully obtained information was being assembled and deployed. In oral closing, Mr Sherborne took the Court to the "*Susie*" entry in the margin of the notes and submitted that this referred to Susie Mallis of ELI. He submitted that the note was, in substance, a record of a "*clear medical blag*" carried out by ELI on Ms Nicholl's behalf, with Ms Nicholl writing down the medical information supplied to her. He then relied on the "*Lloyd*" entry, said to refer to Lloyd Hart of ELI, together with the list of telephone numbers for

persons connected to Ms Frost Law, as further evidence of unlawful tracing and targeting through enquiry agents. The Claimants submit that the later notebook pages then show Ms Nicholl putting some of the obtained medical information directly to Ms Frost Law and others in an attempt to stand the story up, and that the unattributed passage on the following page – "*Found out about ectopic pregnancy … beginning of last week … They were using condoms … St John and Eliz … was treated there and was out in an hour … Jackson has flown over to be with her*" – records information of a kind and detail which, they submit, is strongly indicative of voicemail interception and which, in oral closing, Mr Sherborne submitted was sourced from Sharon Feinstein.

605. On that footing, the Claimants submit that this episode involved both blagging of medical information and the obtaining or use of voicemail-derived information.

606. Ms Frost Law also places this episode within her broader inferential case about the use of private investigators. She submits that Associated's journalists already had access to lawful in-house resources for ordinary locating searches, including directory enquiries and electoral-roll-based databases, and therefore did not need outside agents for simple phone numbers and addresses. On that basis, she submits that the use of agencies such as ELI and JJ Services/Whittamore is to be understood as having been for information not available lawfully in-house; and that, in this case, the use of those agencies at precisely the time when precise, highly sensitive medical information was being recorded and drafted into an article is particularly probative. The Claimants further submit that the fragmentation of the documentary record, and the destruction or non-availability of the wider invoice trail, should not operate to their disadvantage where, they say, the very nature of the conduct alleged was covert and the surviving documents are only what fortuitously remains. They also rely, in this context, on the fact that Sharon Feinstein, said by the defence to have been the source of at least part of the material, was not called to give evidence.

607. Associated submits that the burden remains on Ms Frost Law to prove this specific unlawful episode and that it is not enough to point to the existence of payments to outside agencies, to Ms Nicholl's historical use of private investigators, or to more general evidence that third-party enquiry agents were sometimes used before the 2007 ban. It submits that the Court must undertake what Mr White KC described in oral closing as a "*cold, hard analysis*" of the evidence relating to this episode. In that context, while Mr White KC accepted, in oral closing, that the draft article was "*distasteful*" and "*ugly*", and described it as "*of its time*", he submitted that those features could not relieve the Claimant of the burden of proving that the information in question was obtained by the particular unlawful means alleged. He also emphasised that the Article was never published, and that the Court should not allow its reaction to the terms of the draft to stand in place of proof as to sourcing.

608. Associated further submits that the starting point for analysis is that there was a source for the story, namely Sharon Feinstein. In oral closing, Mr White submitted that there was "*no doubt there is a source here*", relying on what he described as the payment record for the ectopic pregnancy story and on Associated's pleaded and evidential case that Ms Feinstein was the relevant source. Associated submits that the existence of such a source is critical when assessing the alleged significance of the notes and the supposed gaps in the documentary record. It says that the notebook material and draft Article are entirely consistent with the receipt of information from a human source, together with journalistic attempts to check, challenge or stand up the story by contacting Ms Frost

Law and those around her. On that footing, Associated submits that the fact that private information appears in a notebook, or even in a draft article, does not establish that it was obtained through unlawful means.

609. Associated also resists the specific inferences that the Claimants invite the Court to draw from the surviving payment records and notes. It submits that the Whittamore item relating to "*Line x 2*", the occupancy search and references to blagging do not, without more, prove that medical information was blagged from a doctor or hospital or that the private medical information in the draft article came from that work. Likewise, it submits that the two ELI ledger entries of 7 October 2003, one for "*SEARCHES*" and one for an "*URGENT ENQ*", do not prove what was searched for, still less that medical information was blagged. Associated says that the Claimants' effort to connect those entries to the notebook and then to infer a hospital or medical blag is speculative and depends on the very form of inference-upon-inference against which it has consistently cautioned. It also relies on Mr Dillon's evidence that blagging for medical information would have been qualitatively different because such information was obviously private and off-limits; that he would never have blagged for medical information himself or authorised somebody else to do so; and that, had such a course been proposed, he would have refused it.

610. Finally, Associated submits that the Claimants' case in relation to voicemail interception is both evidentially weak and procedurally problematic. It submits that there is no pleaded case that Ms Feinstein herself engaged in voicemail interception in relation to this episode; that the Claimants, although aware from Associated's amended defence and witness statements that Ms Feinstein was relied on as a source, never sought to amend to plead such a case against her as they did in relation to Lee Harpin; and that it would therefore be unfair to make any such finding. Associated also submits that the Claimants' own pleaded and forensic position has shifted from payment-record-based allegations to allegations of direct voicemail interception by journalists or by sources such as Ms Feinstein, and that this illustrates the speculative nature of the case being advanced. More broadly, it submits that the Court should be cautious about drawing adverse inferences from Ms Feinstein not being called, particularly where no pleaded allegation was made against her and where, on Associated's case, she was no more than an important freelance source.

611. In the result, Associated's submission is that the contemporaneous materials may show an intrusive story was being pursued, but they do not prove, to the requisite standard, that the information was obtained by the unlawful means alleged or that any such unlawful means, if used by a third party, were known to Ms Nicholl or attributable to Associated.

(d) Discussion and conclusion

612. I readily accept that the information recorded by Ms Nicholl in her notebook, and thereafter reflected in the draft article, was highly private, deeply intrusive and of an intensely sensitive medical character. It concerned an alleged ectopic pregnancy suffered by Ms Frost Law, the hospital at which she was said to have been treated, the treatment she was said to have undergone, her condition afterwards, her emotional reaction, and the reaction of those close to her, including the fact that Jackson Scott had flown over to be with her. On any view, the obtaining by a journalist of information of that kind gives rise to obvious and legitimate concern as to how access to it was

obtained. Mr White KC was right to describe the draft Article, although never published, as "*ugly*". Had it been published, it would have involved a grotesque and unjustifiable invasion of Ms Frost Law's privacy.

613. Nevertheless, suspicion, even justified suspicion, is not enough. Ms Frost Law must prove, on the balance of probabilities, that this information was obtained by UIG for which Associated is legally responsible. In my judgment, the critical factual issue is whether the notebook entry (at [578] above) is to be understood as a note of information supplied to Ms Nicholl by "*Susie*", said by the Claimants to be Susie Mallis of ELI, or whether it more likely records information which Ms Nicholl said was supplied to her by Sharon Feinstein. The Claimants' case depends materially upon the former proposition. I am not satisfied that they have proved it. On the contrary, I consider it more likely than not that this entry records what Ms Nicholl was told by Ms Feinstein.

614. I reach that conclusion for several reasons. First, there is no evidence, beyond the Claimants' proposed inference, to support the contention that Susie Mallis was herself involved in medical blagging on this occasion or that the entry records the fruits of any such blag by ELI. The ELI ledger entries, of 7 October 2003, name Ms Nicholl, but they do not identify the story, the target, or Susie Mallis. They are capable of showing contact between Ms Nicholl and ELI. They do not, without more, justify the further conclusion that ELI, still less Susie Mallis personally, procured the private medical information recorded in the notebook. To draw that conclusion would not, in my judgment, be to draw a proper inference from the evidence. It would be to jump to an unwarranted conclusion. I bear in mind the Claimants' submission that the documentary record is fragmentary and that surviving documents may only provide an incomplete picture. Even allowing fully for that, however, the surviving material does not, in my judgment, support the specific inference of unlawful medical blagging or voicemail interception for which the Claimants contend.

615. Second, this was the first notebook entry relevant to the draft Article. In context, that is more consistent with Ms Nicholl having received the story in the first instance from a source, rather than recording, unprompted, the fruits of a medical blag carried out by ELI.

616. Third, I accept Ms Nicholl's evidence. I have found her to be a credible and truthful witness (see [A2.335]-[A2.349]). In particular, I accept her evidence that she did not instruct ELI to carry out a medical blag in relation to this story. This conclusion is reinforced by the more general approach to witness memory and serious allegations that I have already set out earlier in this judgment (see [63]). While recollection of detail may fade over time, it is inherently unlikely that a witness would forget whether he or she engaged in conduct of a fundamentally serious kind. If Ms Nicholl had instructed an enquiry agent to obtain private medical information by blagging, that would have been a serious and unusual step. I consider that she would have been unlikely to forget having done so. The Claimants' case therefore requires me to conclude not merely that Ms Nicholl is mistaken, but that her evidence at trial was deliberately untruthful. Assessing the evidence overall, I am not prepared to reach that conclusion.

617. Nor am I satisfied that the Claimants' reliance on the later reference to "*Lloyd*" materially assists them. The suggestion that this must be a reference to Lloyd Hart of ELI is speculative. Ms Nicholl's evidence was that she did not recall speaking to Lloyd Hart, and there is no sufficiently direct evidential link, beyond the same ledger entries,

to connect any such contact with unlawful acquisition of the information in issue. If, contrary to my conclusion, there was some ELI involvement in this story, I would accept Ms Nicholl's evidence that it was to assist in locating individuals – probably Jackson Scott or others connected with the story – so that they could be approached for comment or verification. That use of an enquiry agent may itself invite questions, but it falls well short of proving the medical blagging allegation advanced by the Claimants.

618. As to voicemail interception, I agree with the substance of Associated's submission that there is no proper evidential basis for such a finding. The Claimants' suggestion that the notebook material reflects voicemail interception is unsupported by any direct evidence, and I do not consider the references relied upon by the Claimants adequate to justify that conclusion on the balance of probabilities.

619. That leaves Sharon Feinstein. In my judgment, the Claimants' difficulties here are insuperable. Ms Frost Law did not plead that Sharon Feinstein was guilty of UIG in relation to this episode, whether by medical blagging, voicemail interception or otherwise. For the reasons advanced by Associated, it is not open to the Claimants now to invite the Court to make findings of that kind against her. Ms Feinstein was not a party to these proceedings, no pleaded allegations were made against her, she was not called as a witness, and has had no opportunity to respond to those allegations. The Court has not investigated them as part of the issues it had to decide, and I make no findings of fact in relation to them or in relation to any alleged wrongdoing by Ms Feinstein: see [61]-[62] above. By the same token, I do not accept that Ms Feinstein's absence from the witness box provides a proper basis for the drawing of an adverse inference against Associated. Had a case of UIG been properly advanced against Ms Feinstein, and had there then been a case for her to answer, different considerations might have arisen. But the Claimants have not laid those foundations here.

620. In the result, I readily accept as genuine Ms Frost Law's shock that an Associated journalist had obtained information of this deeply private and distressing kind. It is no surprise, given the nature of the draft Article, that a decision was taken not to publish it. Ms Nicholl says that was an editorial decision. I suspect that any such decision, in reality, would have been heavily influenced by legal advice, given the very serious interference in her privacy that publication would have represented and the complete apparent absence of any arguable public interest justification. But the fact remains that the Article was not published, and Ms Frost Law must establish liability for UIG. In my judgment she has failed to do so. Nothing in this conclusion involves any finding that Ms Feinstein engaged in any unlawful conduct; no such finding is made. I do not accept that the Claimants have proved, on the balance of probabilities, that Ms Nicholl, or anyone else for whom Associated was responsible, was guilty of UIG in relation to this incident.

(19) *"Keep that girl away from our kids!"*: *Mail on Sunday* 2 November 2003 (Katie Nicholl)

621. This is the fifth Article relied upon by Ms Frost Law in her claim.

622. The Article was published in the *Mail on Sunday*, on 2 November 2003, under the headline "*Keep that girl away from our kids!*", bylined to Katie Nicholl. It reported that, in the aftermath of the divorce, Ms Frost Law was distressed by the growing seriousness

of Jude Law's relationship with Sienna Miller; that she was concerned about Sienna Miller spending too much time with the children; that she had told Jude Law she did not want Sienna Miller to be seen as a "*second mother*" to them; and that, in a heated telephone conversation, she had warned him to "*keep that girl away from our kids*". The Article also stated that she had banned Sienna Miller from the former family home and attributed further comment to unnamed sources about the positions of both Jude Law and Ms Frost Law.

(a) The issues

623. The issue is whether Ms Frost Law has proved that the private information published in the Article was obtained by UIG. As with other Articles in this claim, there is no substantial dispute that the information was private in nature. The real question is whether the Claimants have established, on the balance of probabilities, a proper evidential basis upon which the Court can conclude that the Article was the product of UIG rather than information provided by a source or sources.

624. In that respect, this is another Article in relation to which the way the Claimants ultimately put their case at trial did not sit easily with the pleaded allegation. Associated's submission that the Article-specific UIG case shifted and lacked a clear, consistent mechanism has some force.

(b) The evidence

625. In her first witness statement, Ms Nicholl said that she remembered this Article. She explained that, when first asked about the sourcing of the information that Ms Frost Law had told Jude Law to "*keep that girl away from our kids*", she believed the information came from a confidential source, identified in her statement as "SFL5-A". She described that source as one of Sienna Miller's long-term friends, with whom Ms Miller regularly confided about her relationship with Jude Law and his relationship with Ms Frost Law. Ms Nicholl said that this source had also been the source who first gave her the story that Ms Miller was dating Jude Law. She further relied upon an excerpt from her notebook at the time, and on a "*stories*" list and payment material, as supporting her recollection that this source had provided information for the Article. In particular, she referred to a payment of £1,000 with the description "*Sadie – get that girl out my house*", which she said confirmed that the source had given her information for this Article. She expressly denied that the reference in the Article to a "*heated telephone conversation*" meant that she had tapped a phone or been given any illicit recording or transcript. Her evidence was that the source had been told directly by Sienna Miller that the conversation had happened and what had been said.

626. In her second witness statement, Ms Nicholl maintained that the source, SFL5-A, was not a freelance journalist but a confidential source who was a long-term friend of Sienna Miller, and that this person gave her information on a confidential basis and on the explicit understanding that the source's identity would not be revealed. She denied that the source was someone obtaining information by unlawful means.

627. In cross-examination, the Claimants challenged the plausibility of Ms Nicholl's sourcing account. She was taken to the private nature of the information in the Article, in particular the reference to the "*heated telephone conversation*" and to Ms Frost Law having "*confided to friends*". It was put to her that the information about calls between

Ms Frost Law and Jude Law had been obtained by voicemail interception or similar unlawful means. Ms Nicholl denied that. She maintained that the reference to the heated telephone conversation derived from what her source had been told by Sienna Miller, and that any reference to Ms Frost Law confiding in friends may have been obtained by her from another source in the ordinary way in which she sought to stand stories up. She rejected the suggestion that the information in the Article had been obtained through voicemail interception or other unlawful means.

628. The evidence of Ms Frost Law relied upon by the Claimants in relation to this Article was that the information was private and that she had not provided it to Ms Nicholl. The Claimants relied on the intimate nature of the material, and in particular the reference to the telephone conversation, as supporting an inference of unlawful acquisition. But, as Associated points out, that falls short of evidence identifying any specific act of UIG or any reliable linkage evidence between the Article and a pleaded unlawful mechanism.

629. Mr Law also addressed this Article in his witness statement (see [A2.511]). He said that he remembered Ms Nicholl and recalled her becoming "*very personal*" in targeting him and Ms Frost Law. In relation to this Article specifically, he said that he remembered Ms Frost Law not wanting Sienna Miller to be a "*second mother*" to the children, and that he remembered the dialogue of Ms Frost Law telling him to keep Sienna Miller away from the children. His evidence was that this was "*very specific*", was not something he would say to a journalist or anyone else, and was a private conversation or communication between them in a voice message. He also said that he did not, and does not, have a group of friends in whom he confided such matters, and that by 2003 he was even more conscious of the need to be careful because of concerns about leaks.

(c) The parties' submissions

630. The Claimants submit that the Article contained highly private information about communications between Ms Frost Law and Jude Law, and about Ms Frost Law's feelings and what she had said to friends, which could not have been known unless obtained unlawfully. They submit that Ms Nicholl's account of the source is unsatisfactory and that the Court should not accept the proposition that such information simply came from a friend of Sienna Miller or from other lawful human sources. They further submit that the sourcing account is weakened by the absence of any contemporaneous note clearly attributing the Article's critical information to a legitimate source and by what they characterise as the implausibility of the source description given by Ms Nicholl.

631. Associated submits that the Claimants' case on this Article suffers from the same difficulty as several other Articles. The content is said to be suspicious, but no coherent episode-specific mechanism of UIG is proved. It points out that the way the allegation was ultimately advanced at trial departed from, or at least shifted away from, the pleaded case, and that the Claimants never established any reliable documentary or testimonial basis for connecting this Article with phone hacking, blagging, or any other unlawful step. Associated relies on Ms Nicholl's evidence that the core information came from a confidential source close to Sienna Miller, and submits that her account is supported by contemporaneous payment and note material. It also submits that the Court should not infer UIG merely because the information was private or because the surviving documentary record is incomplete.

(d) Discussion and conclusion

632. In my judgment, Ms Frost Law has failed to prove that the private information in this Article was obtained by UIG. I accept that the information was private and that the Article intruded into a sensitive area of family and personal life. I also take into account Mr Law's evidence that the relevant exchange was private and not something he would have shared with journalists or more generally. But those matters do not themselves establish the mechanism by which the information was obtained. The burden remains on the Claimants to prove, on the balance of probabilities, that the Article was the product of UIG, and, in this instance, Ms Frost Law has not discharged that burden.

633. I accept Ms Nicholl's evidence that the Article was sourced, at least centrally, from someone close to Sienna Miller. Her account in that respect was maintained in both witness statements and in cross-examination. The contemporaneous material to which she referred – in particular the story list and payment record relied upon in her first witness statement – provides some support for the existence of such a source. I do not consider that the Claimants established any sufficient basis for rejecting that evidence as untruthful or otherwise unreliable in relation to this Article. I have found Ms Nicholl to be a truthful witness (see [A2.335]-[A2.349]).

634. I also consider that Associated's criticism of the way the case was put on this Article has some force. The pleaded allegation changed, or at least the emphasis shifted materially by the time of trial, and no clear, consistent, evidence-based mechanism of UIG was ultimately established. This is not a case in which there is documentary material specifically linking the Article to a private investigator, a ledger entry, an invoice, or some other item of linkage evidence from which an inference of unlawful acquisition can properly be drawn. Nor is it a case in which the contemporaneous material, or the witness evidence of Ms Frost Law and Mr Law, shows or strongly suggests that the critical information could only have been obtained by voicemail interception or some analogous unlawful means. In particular, the reference in the Article to a "*heated telephone conversation*" does not of itself provide a sound basis for inferring voicemail interception as the means by which the information was obtained. Fundamentally, what the Claimants ask the Court to do is to infer UIG simply from the private character of the information and from criticisms of Ms Nicholl's sourcing account. In my judgment that is not enough.

635. Accordingly, I am not satisfied that Ms Frost Law has proved that UIG was used by Ms Nicholl in respect of this Article. I accept Ms Nicholl's evidence that she had a source for the information. It follows that the claim, so far as based on this Article, fails.

(20) "*Sadie v Jude*": *Mail on Sunday* 29 February 2004 (Katie Nicholl)

636. This is referred to as Article 5A by Ms Frost Law in her claim.

637. The Article was published in the *Mail on Sunday*, on 29 February 2004, under the headline "*Sadie v Jude*", bylined to Katie Nicholl. It concerned the custody dispute between Ms Frost Law and Jude Law following the breakdown of their marriage. Among other matters, it referred to what Mr Law was said to be paying so that Ms Frost Law could keep the family home; that he wished to avoid court whereas she wanted a formal court-ordered arrangement; to a conversation between them following press reports concerning a party for Kate Moss's thirtieth birthday; and to comments said to

have been made by Ms Frost Law to friends, including that she planned to "*take him to the cleaners*".

(a) The issues

638. The issue is whether Ms Frost Law has proved that the private information published in the Article was obtained by UIG. In relation to this Article, the pleaded allegation is more specific than in many others. The Claimants' case is that the information was provided to Ms Nicholl by Lee Harpin, and that he had obtained it by voicemail interception and/or itemised phone billing. The pleaded case further alleges that Ms Nicholl knew that the information provided by Mr Harpin was the product of such unlawful methods.

639. Two distinct questions therefore arise. First, have the Claimants proved that the information supplied by Mr Harpin (if any) was in fact obtained by UIG? Secondly, if so, have they proved that Ms Nicholl knew that this was so? The second question cannot be answered affirmatively merely because Mr Harpin was paid for the story or because, years later, he came to be associated with unlawful methods. What must be proved is knowledge on the part of Ms Nicholl at the time.

(b) The evidence

640. In her fifth witness statement, Ms Frost Law addressed this Article specifically. She said that it concerned the custody battle between her and Mr Law; that it referred to what he was paying for her to keep the family home, to his wish to settle matters out of court whilst she wanted a formal court-ordered arrangement, to a conversation between them following reports about a party for Kate Moss's thirtieth birthday, and to comments she made to friends. She said that the information was true, although she did not believe she would have used the exact words "*taking Jude to the cleaners*". She further said that, so far as the financial side and custody battle were concerned, she did not believe she discussed that information other than with Mr Law, his assistant Ben Jackson, and lawyers, although she accepted that she would have confided in some close friends about her feelings at the time. Her evidence was that it was all private and not the sort of thing she wanted to be public.

641. Ms Nicholl said, in her second witness statement, that she did not remember much about this Article. She accepted that there was a payment record showing a payment of £750 to Mr Harpin, on 29 February 2004, with the description "*Jude & Sadie custody battle*", and accepted that this payment related to the story. She said that, when first asked about the sourcing of the story, she remembered that Mr Harpin was good friends with Meena Khera, who at one stage was PR for both Ms Frost Law and Mr Law. She was shown an email from Mr Harpin, dated 15 January 2004, offering various tips, one of which concerned Ms Frost Law, and in which he referred to Ms Khera. Although she could not say with certainty what Mr Harpin told her about the source for the particular tip that led to this Article, she said that it seemed to her very likely that some of the information in the Article came from Ms Khera (via Mr Harpin), or at least that she would have assumed this at the time.

642. Ms Nicholl also said that she had another source, identified in her evidence as "SFL5A-A", who was a close friend of Sienna Miller, and that she thought it very likely that she spoke to that source as well. She was shown notebook pages, which she

believed related to the story, and said that these would be notes from conversations with a source or sources, by which she meant a direct source of information and not Mr Harpin. She thought it likely that the information in those notes came from SFL5A-A. In particular, she identified the note recording the words "*she plans to take him to the cleaners*" as something she believed came from that source. She denied that this was information obtained by voicemail interception or itemised phone billing. She explained that the notes appeared to come from one of her smaller notebooks – the sort she tended to use when taking notes over lunch or drinks with a source she saw socially – and said that she did not have that sort of relationship with Mr Harpin.

643. Ms Nicholl further said that she could not now say precisely what information in the Article came from Mr Harpin and what came from other contacts. However, she said that the information in the Article about a phone call was the sort of information that her contacts could have known without any illegitimate means. She said that one of her sources often heard detailed information about calls and conversations between Ms Frost Law and Mr Law via a close friend who knew Mr Law. She added that, equally, if Mr Harpin had told her about such a call, she would not have found that suspicious because one of his contacts – such as Ms Khera – might well have known about it. She also pointed to contemporaneous press coverage which she said she would likely have read, including an interview with Mr Law in the *Daily Telegraph*, on 20 February 2004, and a *Sunday Mirror* article, of 22 February 2004, concerning the custody dispute.

644. In her second witness statement generally, under the heading "*Allegations in respect of Lee Harpin*", Ms Nicholl said that Mr Harpin was a freelance journalist who sometimes contacted her with tips. At the relevant time he had, she said, a reputation as an established journalist with well-placed sources. While she would not have expected him to reveal the names of his sources, she would have questioned him about the sources and their reliability as a matter of course and that she had no reason to think that the tips and information he provided were the product of UIG. She said expressly that she did not know about voicemail interception or phone hacking at that point in time.

645. In cross-examination, Ms Nicholl accepted that the Article contained sensitive and private information and that Mr Harpin was paid £750 for the story. She was challenged on her suggestion that some information may have come from Ms Khera, it being put to her that the 15 January 2004 email concerned a different, positive story and that there was no sensible basis for thinking that Ms Khera would have supplied the more intimate and negative information in this Article. Ms Nicholl did not accept that none of the information in the story could have come via that route, but she also made clear that not all of the information in the Article came from Mr Harpin.

646. Ms Nicholl was then taken to her notebook pages recording a series of source quotations, including "*She wants to get full custody*", "*She said she is going to take him to the cleaners*", and references to Mr Law wanting matters to be sorted out amicably. It was put to her that these pages recorded what Mr Harpin had provided for the lead story and that there was no other record of what he had supplied in return for the £750 payment. She rejected that. Her evidence was that these were source quotes from her other confidential source, not from Mr Harpin. She explained, both in her witness statement and orally, why she thought the smaller notebook supported that conclusion.

647. It was also put to Ms Nicholl that Mr Harpin was "*well known*" in 2003/2004 for voicemail interception and had a Fleet Street reputation for phone hacking. She denied that. She said that she did not know that at the time. Later in the cross-examination, and in a more general discussion of the Harpin stories, it was put to her that, when she quizzed Mr Harpin about his sources, she found out that the information had been obtained through unlawful means. She again denied that absolutely.

648. Finally, the Claimants put to Ms Nicholl that a *Sunday Mirror* article, published on the same day, contained strikingly similar information, and that Mr Harpin had also provided information for that article. It was suggested that she would have known that Mr Harpin was supplying the same unlawfully obtained information to more than one newspaper. Ms Nicholl did not accept that.

(c) The parties' submissions

649. The Claimants submit that the Article contained highly private information about the custody dispute between Ms Frost Law and Mr Law, including information about their communications and Ms Frost Law's private feelings. They rely on the £750 payment to Mr Harpin for "*Jude & Sadie custody battle*" as showing that he was the source of the story. They submit that Ms Nicholl's attempt to suggest that some of the information may have come from Ms Khera is unsatisfactory and illogical, given the nature of the information in the Article and the very different, positive tip contained in the 15 January 2004 email. They further submit that the pages of Ms Nicholl's notebook, which contain much of the language reflected in the Article, are the real record of what Mr Harpin provided; that there is no independent record of a lawful source for that material; and that Ms Nicholl was inconsistent in her reliance on SFL5A-A. They rely also on the appearance of similar information in a *Sunday Mirror* article published on the same day, together with material said to show that Mr Harpin was paid in relation to that article, as supporting the inference that he obtained the information by voicemail interception and passed it to Ms Nicholl, who knew the position.

650. Associated submits that the Claimants have not proved either limb of their case. It submits that the evidence does not show what information, if any, Mr Harpin provided for this Article beyond the fact that he was paid for it. Associated relies on Ms Nicholl's evidence that she would not have relied solely on Mr Harpin, that she would have second-sourced any material he gave her, and that the notebook pages recording the "*take him to the cleaners*" material were from a different confidential source. It submits that there is no proper evidential basis for inferring that Mr Harpin obtained information for this Article by voicemail interception; that the additional pleaded allegation of itemised phone billing was never properly put to Ms Nicholl; and that Ms Frost Law's own evidence accepts that she confided in some close friends at the time.

651. Associated further submits that no clear article-specific allegation was put to Ms Nicholl that she knew that information provided by Mr Harpin had been obtained by UIG. It relies, in that regard on the later, more general cross-examination to the effect that Mr Harpin was "*well known*" for phone hacking and that he must have told her his methods. Ms Nicholl denied both propositions. In its closing submissions, Associated also submits that the Claimants had spoken to Mr Harpin but elected not to call him, and that material generated in 2019 does not support the proposition that he would admit that stories he sold to Ms Nicholl had been phone hacked.

(d) Discussion and conclusion

652. In my judgment, Ms Frost Law has failed to prove that the private information in this Article was obtained by UIG. I accept entirely that the information was private. I also accept that the Article drew on matters that were sensitive and upsetting for Ms Frost Law and which she did not wish to see in the press. But the issue is not whether the information was private. The issue is whether the Claimants have proved, on the balance of probabilities, the unlawful means by which it was obtained.

653. The claim as pleaded in relation to this Article depends upon the proposition that Mr Harpin obtained the relevant information by voicemail interception and/or itemised phone billing. I am not satisfied that that has been proved. There is, plainly, room for suspicion. Mr Harpin was paid £750 for the story. The Article contained private detail. There was some overlap between the Article and a *Sunday Mirror* article published on the same day. Those matters justify scrutiny. But suspicion is not proof. There is no direct evidence of what, specifically, Mr Harpin supplied for this Article; no evidence of any voicemail or itemised billing data connected to it; and no article-specific evidence showing that the critical information could only have been obtained by one or other of the unlawful means alleged.

654. Nor do I accept that the entries in Ms Nicholl's notebook provide a sufficient basis for concluding that the source of that material must have been Mr Harpin, still less that he obtained it unlawfully. Ms Nicholl's evidence was that those notes recorded information from a different source, and she explained why she thought that. The fact that no source name appears in the margin does not, in my judgment, justify the inference for which the Claimants contend. As elsewhere in the evidence, the absence of explicit attribution in a notebook is an insecure foundation on which to build a finding of serious wrongdoing. I do not consider that the overlap with the *Sunday Mirror* article materially advances matters. Even if there are similarities between the two articles, that does not prove that Mr Harpin obtained the information for this Article by voicemail interception or itemised billing.

655. In any event – and this is the more fundamental point – the Claimants have not proved that Ms Nicholl knew that information provided by Mr Harpin had been obtained by UIG. On the evidence, Ms Nicholl accepted that she used Mr Harpin as a freelance journalist who supplied tips; that she would question him about the reliability of his source; and that she had no reason at the time to think that the information he supplied was unlawfully obtained. She denied knowing, in 2003 or 2004, that he had any reputation for voicemail interception. She also denied that he had ever told her that his information was obtained through unlawful means. Those denials were clear and I accept them.

656. I should add that there is no doubt that, years later, concerns were raised within Associated about material supplied by Mr Harpin and its provenance. That appears to have occurred in 2014 in response to the police inquiry seeking a statement from Ms Nicholl about the sourcing of the Luciana Berger article (see [A2.517]), when a batch of Harpin-related articles was identified and reviewed. This Article was included in that batch, and the words "*he called her*" were underlined. The evident concern raised by those annotations was whether material of that kind might have reflected voicemail interception or other UIG. Ms Nicholl was asked about that review in cross-examination, and it was also the subject of evidence from Mr Wellington. However,

those suspicions arose many years after publication, and in the context of a police inquiry into Mr Harpin's activities. They do not assist in proving what Ms Nicholl knew in February 2004; nor do they prove that any information provided by Mr Harpin for this Article was in fact the product of voicemail interception or any other form of UIG.

657. The Claimants did not, in my judgment, lay a proper evidential basis for the proposition that Ms Nicholl knew, at the time of publication, that Mr Harpin had obtained information by voicemail interception or itemised billing. The article-specific cross-examination largely focused on whether the notebook pages recorded what Mr Harpin had supplied and on the unsatisfactoriness of the suggested lawful sourcing route via Ms Khera. The more direct knowledge allegation emerged only in general form: that Mr Harpin was "*well known*" for voicemail interception in 2003/4, or that he must have told Ms Nicholl that his methods were unlawful. She denied both propositions. I do not consider that the evidence permits a finding, on the balance of probabilities, that she knew that any information provided by Mr Harpin had been obtained by UIG. Still less do I consider that it would be permissible to infer such knowledge merely from later suspicions or from the fact that he was, years afterwards, associated with phone hacking.

658. It follows that the Claimants fail on both elements of the case advanced in relation to this Article. I am not satisfied that they have proved that Mr Harpin obtained the information by UIG; and, in any event, I am not satisfied that they have proved that Ms Nicholl knew that any information supplied by him had been obtained by UIG, whether by voicemail interception, itemised phone billing, or otherwise. Accordingly, Ms Frost Law's claim, so far as based on this Article, fails.

(21) *"Yard admits defeat in battle to charge Stephen's killers"*: *Daily Mail* 5 May 2004 (Stephen Wright)

659. This is the third Article relied upon by Baroness Lawrence in her claim.

660. The Article, written by Stephen Wright and published in the *Daily Mail*, on 5 May 2004, reported that the Metropolitan Police and the CPS had effectively reached the end of the road in their efforts to bring fresh charges over the murder of Stephen Lawrence. It stated that the Director of Public Prosecutions would tell detectives that there was insufficient evidence to prosecute, that alternative charges such as assault or perverting the course of justice would not be pursued, and that the Lawrence family had been put on standby for the announcement. It also referred to the history of the investigation, the substantial public expense of the re-investigation, and the impact of the case on the Metropolitan Police.

(a) The issue

661. The issue in relation to this article is whether the Claimants have proved that the information in it was obtained by UIG. More specifically, in the form in which the case was ultimately advanced at trial, the question is whether the information in the article came from Mr Wright paying John Ross, as his "*special contact*", for information obtained through Ross's links with corrupt police officers involved in the Lawrence investigation. That was the allegation finally put to Mr Wright in cross-examination.

(b) The evidence

662. In his first witness statement, Mr Wright explained that, by May 2004, he had been reporting on the Lawrence investigation for many years, and was following developments in the case closely. He said that he knew from his own enquiries, and from other reporting, that the CPS had had the file for a lengthy period and that a decision was expected soon. He described making regular enquiries of the CPS press office about whether there had been any development and when any announcement might be made.

663. Mr Wright said that, in one such call, a press officer told him that a "*lengthy public statement*" would be made the following week. He explained that, from his experience, that enabled him to infer that no charges would be brought. If charges were to be brought, the CPS would simply announce them rather than issue a detailed explanatory statement. He then said that he checked that inference with a confidential source who was a senior MPS officer and a former member of the murder squad. He denied paying that source.

664. As to the statement in the article that Stephen's parents had been "*put on standby*", Mr Wright said in his witness statement that he was not sure where that information came from. He said that it could have reflected no more than his own understanding of ordinary CPS and police practice in a case of that sort. He also said that Neville Lawrence had a good relationship with the *Daily Mail* and had provided the paper with a copy of the 5 May 2004 letter sent by the authorities, although Mr Wright could not say whether he had seen that letter before writing the article or only later.

665. In cross-examination, Mr Wright maintained that he could not now identify with certainty the source of that information, but said that it was entirely plausible either that he was setting out his understanding of usual practice or that Neville Lawrence had contacted the paper to find out what was happening. He accepted that the Article reported the matter as a fact, but resisted the suggestion that, because he could not now identify the source precisely, the Court should infer unlawful sourcing.

666. Mr Wright also addressed the pleaded link to Steve Whittamore/JJ Services. In his witness statement he said that he had been told that Associated had paid Whittamore/JJ Services, on 3 May 2004 and 10 May 2004, for "*CONFID ENQUIRIES*" in the sums of £1,777.50 and £600 respectively, but that he did not use Mr Whittamore in relation to this Article and did not know to what those payments related.

667. In a separate part of his witness statement dealing with John Ross, Mr Wright said that Ross had been introduced to him in the mid-to-late 1990s by Peter Rose. He understood him to be a freelance journalist and tipster with good contacts. He had, on occasion, taken him to lunch or paid modestly for tips or background. But he expressly denied ever paying John Ross to pay a serving police officer, and said that he would not have wanted, asked for or knowingly taken information purchased from a serving police officer.

668. When the allegation was finally put to him in cross-examination that the information in this Article had come from his paying Ross, as his "*special contact*", for information obtained through Ross's links with corrupt police officers involved in the investigation,

Mr Wright rejected it in emphatic terms, saying that there was "*no evidential basis*" for the allegation.

669. Because that allegation was advanced against the background of a broader case, that Mr Wright generally used Mr Ross as a conduit for corrupt payments to police officers, it is necessary to consider the evidence that was adduced on that wider issue.

670. The principal evidential support for the Claimants' broader allegation is the evidence of Derek Haslam. In his witness statement, Mr Haslam explains that, between 1997 and 2005, he acted as a covert intelligence source for the Metropolitan Police in relation to Jonathan Rees and Southern Investigations. He says that he reported intelligence verbally to his handlers after meetings with Rees and/or Fillery; that his reports were retained by the Metropolitan Police; and that he was able to report that Rees and Fillery were deeply involved in corrupting serving police officers and acted as a conduit between corrupt police officers and organised criminals. He further states that he was able to report "*the connections between Southern Investigations and the newspapers*", involving the harvesting of confidential information by unlawful means, including phone tapping, hacking, bribing police officers and other unlawful methods.

671. As to the *Mail* titles specifically, Mr Haslam states that Rees "*used to brag about working for the Mail newspapers*"; that, although he cannot now recall specific stories worked on or sold to the Mail, he knows for certain that Rees boasted about doing "*illegal stuff*" for them; and that Rees admitted frequently that he and Fillery did work for the *Daily Mail* and *Mail on Sunday*, by which Mr Haslam says he meant both "*regular PI services*" and tips or story leads obtained by their usual methods.

672. In relation to the Stephen Lawrence context, Mr Haslam says that Rees was "*obsessed*" with the case; that all newspapers, including the *Mail* titles, wanted information about it and about Baroness Lawrence; and that Rees used unlawful "*research services*", including corrupt payments to police officers and other confidential data unlawfully gathered, as part of his operations against the Lawrence family. He says that Rees spoke about obtaining information from corrupt police officers involved in the Lawrence investigation and passing it to newspapers, including the Mail.

673. Mr Haslam also addresses Mr John Ross specifically. He describes Ross as "*a corrupt policeman who left the force and became a private investigator*" and says that, like Rees, he "*specialised in selling information to the Mail and other newspapers from corrupt, serving officers*". Mr Haslam states that Rees would talk of Ross and how, on occasion, they "*worked together on stories on behalf of the Mail and other newspapers*", and that, from his recollection of conversations with Rees and Fillery, Ross also targeted Baroness Lawrence and the investigation into Stephen Lawrence's murder.

674. In addition, the Claimants relied on material concerning *Flat Earth News* and the cross-examination of Mr Wright about it. In his first witness statement, Mr Wright said that he had been asked about John Ross by Jon Steafel in 2011 because Ross's name had been brought up by Nick Davies – the author of *Flat Earth News* – during the Leveson Inquiry. In cross-examination, passages were put to Mr Wright from *Flat Earth News* and related Leveson material concerning an anonymised individual described as a former police officer who was said to act as an intermediary between journalists and corrupt serving police officers. It was put to Mr Wright that the

anonymised individual was Ross and that this was what Ross was doing for him. It was also put to Mr Wright that the fact that Mr Steafel had spoken to him in 2011 supported the inference that both Associated and Mr Wright understood Ross to have been used in that way. Mr Wright denied those suggestions. He denied that he had obtained information from corrupt police officers who were paid via Ross; denied knowledge that Ross specialised in selling information obtained by paying corrupt serving police officers; denied that Peter Rose had told him Ross was a middleman between Fleet Street reporters and corrupt serving officers; and said that, having gone through his cuttings from the relevant period, he had been unable to identify any story for which Ross was remunerated.

675. Associated relied, in response, on the evidence of David Wood. In his witness statement, Mr Wood explains that he oversaw the relevant anti-corruption operations, including Operation Nigeria, until handing over leadership and supervision to Mr Quick. He states that the Metropolitan Police investigations into Rees and Fillery established that they worked for some newspapers, but that he does not remember the *Daily Mail* or the *Mail on Sunday* being mentioned or implicated in the course of Operation Nigeria. He further states that Mr Haslam did not disclose to him, either then or at any subsequent contact meeting, that the *Daily Mail*, the *Mail on Sunday*, or any of their journalists, were said by Rees or Fillery to have asked them to carry out work. He says also that, having had the opportunity when giving evidence to the Daniel Morgan Independent Panel to review the contemporaneous contact sheets that he had submitted to police records at the time, those contact sheets fortified his memory that Mr Haslam provided limited useful material to CIB3 and did not report that Southern Investigations were said to have put Baroness Lawrence under surveillance.

676. In cross-examination, Mr Wood maintained that he had "*absolutely no memory*" of the *Daily Mail* or the *Mail on Sunday* being mentioned in Operation Nigeria. At the same time, he accepted, fairly, that absence of recollection did not enable him to say that there was "*never a mention*": he said, "*I couldn't say there was never a mention. I've certainly no memory of it and I don't think there was, but it's fair what you say*". He also accepted that, by the later stages, he was no longer Mr Haslam's handler, and that his evidence was therefore necessarily limited by the scope of his own involvement and recollection.

(c) The parties' submissions

677. The Claimants' submissions on this Article, as finally advanced, were inferential. They relied on the fact that the Article contained sensitive and confidential information about the imminent CPS decision and communication with the Lawrence family; on Mr Wright's inability to identify with precision the source of at least some of the detail, in particular the statement that the Lawrences had been "*put on standby*"; and on the submission that the Court should view this Article in the context of a broader pattern in which Mr Wright used Ross as a conduit for payments to corrupt police officers.

678. In support of that broader submission, the Claimants relied upon Mr Haslam's evidence concerning Rees, Southern Investigations, the *Mail* titles, the Lawrence investigation and Ross; upon the later evidence of contact between Mr Wright and Ross; upon what they submit are suspicious features of Mr Wright's evidence about Ross and "*special contact*" payments; and upon the *Flat Earth News* material and the cross-examination of Mr Wright about it. Their case was that, taken cumulatively, those matters support the inference that Ross was used by Mr Wright as an intermediary for obtaining

confidential police information by corrupt means and that the same explanation should be adopted in relation to this Article. In that way, the broader case ultimately crystallised in the specific allegation put to Mr Wright, in cross-examination, that he had paid Ross as his "*special contact*" for information obtained through Ross's links with corrupt police officers involved in the Lawrence investigation.

679. Associated submitted that the Article was the product of ordinary journalistic enquiry and legitimate sourcing. They relied on Mr Wright's evidence that he inferred from the CPS press office's indication that a lengthy statement would be forthcoming that there would be no charges, and that he checked that inference with a confidential source whom he did not pay. They submitted that the broader allegation that Mr Wright used Ross as a conduit for corrupt payments was not established and provided no proper foundation for the article-specific allegation.

680. More specifically, Associated submitted that the Claimants' original pleaded Whittamore route was not pursued at trial; that there was no documentary evidence linking Ross to this Article; that Mr Haslam's evidence was too general and insufficiently specific to support the serious inference sought; that Mr Wood's evidence undermined the suggestion that the relevant allegations had been reported contemporaneously; and that the *Flat Earth News* material was anonymous hearsay which did not identify Mr Wright, this Article or any transaction relevant to it. They submitted that the late shift to an allegation of payment through Ross to corrupt police officers was unsupported by evidence and should be rejected.

(d) Discussion and conclusion

681. I accept the evidence of Mr Wright. His account of the central mechanism by which he came by the story is coherent and plausible. He had followed the Lawrence investigation closely for years; he learned from the CPS press office that a lengthy statement would be issued; he inferred from that that no charges were to be brought; and he checked that inference with a confidential police source whom he says he did not pay. That is a comprehensible journalistic route to the story.

682. I have considered the broader allegation that Mr Wright generally used Mr Ross as a conduit for corrupt payments to police officers. I am not satisfied that the Claimants have proved that allegation. Mr Haslam's evidence provides some support for the proposition that Rees boasted of UIG and corrupt police contacts and that Ross was spoken of in that milieu as someone who worked with Rees and sold information to newspapers, including the *Mail* titles. But, for the reasons I have given in Appendix 2 ([A2.126]-[A2.131]), the evidential value of Mr Haslam's evidence is limited. It is generalised, unsupported by contemporaneous documents before the Court, and does not identify any article-specific transaction involving Mr Wright, Ross and the information published. Mr Wood's evidence does not positively disprove the allegation, but it is relevant that he does not recall any report implicating the *Mail* titles or their journalists, and that his later review of contemporaneous contact sheets fortified that absence of recollection.

683. I reach the same conclusion in relation to the *Flat Earth News* point. The material relied upon by the Claimants, and the cross-examination founded upon it, do not bear the weight that the Claimants seek to place upon them. The passages relied upon were anonymous hearsay and did not identify Mr Wright, this Article, or any specific

transaction relating to it. Nor do I consider that the fact that Mr Steafel spoke to Mr Wright, in 2011, after Ross's name was raised in the Leveson context, supports the inference that Mr Wright had used Ross as an intermediary for corrupt payments to police officers, whether generally or in relation to this Article. Standing back and considering the evidence as a whole, I am not persuaded on the balance of probabilities that Mr Wright operated, generally, in the way alleged by the Claimants.

684. In any event, and more importantly for present purposes, there is no evidence linking Ross to the sourcing of this Article. I accept Mr Wright's evidence that the Article was not sourced through any payment made by him, whether directly or through Ross, to a corrupt police officer. There is no direct evidence of any such payment. There is no documentary evidence linking Mr Ross to this Article. Nor is there documentary evidence linking the Whittamore/JJ Services payments identified in the financial records to this Article; on the contrary, Mr Wright's evidence was that he did not use Mr Whittamore in relation to it.

685. The inability of Mr Wright, after the passage of over twenty years, to identify with precision the provenance of the statement that the Lawrences had been "*put on standby*" does not justify the serious finding for which the Claimants contend. His explanation that this may have reflected his understanding of ordinary practice, or may have derived from contact with Neville Lawrence, was not shown to be false. Nor does the coincidence in timing between the family being informed and the paper having the story provide a sufficient evidential basis for the inference that corrupt payments to a police source must have occurred.

686. In my judgment, the allegation that Mr Wright made a payment through Ross to a corrupt police officer is not proved by any evidence. There is no proper evidential basis upon which that conclusion could be reached by inference. Baroness Lawrence has therefore failed to prove that this Article was the product of UIG.

(22) *"You're both single so stop hiding, Liz tells Hugh and Jemima…"*: *Mail on Sunday* 18 July 2004 (Claire Newbon)

687. This is the ninth Article relied upon by Ms Hurley in her claim.

688. This Article was published in *The Mail on Sunday*, on 18 July 2004, under the byline of Claire Newbon. It reported that Hugh Grant and Jemima Khan were no longer making any serious attempt to conceal their relationship. The Article referred to Mr Grant spending a Friday afternoon at Ms Khan's Fulham home, returning there later that evening, and leaving again the following morning. It also stated that, during a "*heart-to-heart telephone conversation*" the previous week, Ms Hurley had advised Mr Grant to end the speculation surrounding his relationship with Ms Khan and had expressed approval of it. The Article attributed this information to a "*source close to the actress*".

(a) The issues

689. The issue raised by this Article is whether Ms Hurley has proved, on the balance of probabilities, that information in the Article – in particular the account of the "*heart-to-heart telephone conversation*" – was obtained by UIG, as alleged phone hacking by Lee Harpin, and, if so, whether Ms Newbon knew that it had been so obtained.

The original pleaded case alleged voicemail interception by Mr Harpin and/or his having obtained, unlawfully, itemised phone records. The latter allegation was not pursued at trial, whether in the cross-examination of Ms Nicholl or in final submissions by the Claimants.

(b) The evidence

690. Ms Hurley addressed this Article in her second witness statement at. She said that there certainly were private telephone conversations between her and Mr Grant about his relationship with Ms Khan. She explained that she could not understand the secrecy surrounding the relationship when both were single and that, from her own experience, secrecy only made a story more alluring. She said that she and Mr Grant did have such a conversation at the time. Ms Hurley was not challenged on her evidence about this Article.

691. There is evidence that a payment of £1,000 was made to Lee Harpin, on 18 July 2004, with the description "*Jemima and Hugh*".

692. The Claimants also relied on Mr Dillon's evidence. In his witness statement, Mr Dillon said that he had no recollection of being involved in this Article. The Claimants further relied on his oral evidence that, in his role on the News Desk, he may have been involved in the discussion or investigation of the story. However, Mr Dillon did not give any evidence identifying any specific unlawful act in relation to this Article, nor any evidence that information in it had been obtained by voicemail interception.

693. The bylined journalist, Claire Newbon (now Claire Murphy), did not attend trial. Her witness statement was admitted as hearsay. In it, she explained that, in July 2004, she was a relatively junior freelance reporter at the *Mail on Sunday* with a limited contacts book. She recalled that the Article was published during what she believed was her final week of regular freelance shifts and that Katie Nicholl was away on annual leave that week. Ms Murphy said that, for this Article, she was "*pretty certain*" that she would have tried to contact the only person she knew from Ms Hurley's and Mr Nayar's social circle to obtain an insight into Ms Hurley's views, and that she would also have gone to the cuttings library for background material already in the public domain.

694. As to Lee Harpin, she said that she had no clear memory of ever having met or spoken to him; he was not one of her contacts and she did not have an established working relationship with him. She added, however, that if anyone at the *Mail on Sunday* had suggested that she speak to one of his sources, or had asked her to write up quotes sourced by him, she would only ever have done so in good faith believing the information to have been sourced legitimately. She denied that she instructed, or was asked to instruct, anyone to intercept calls or voicemails, obtain itemised phone bills, or bug a phone, car or building in connection with this or any other story.

695. Ms Nicholl dealt with this Article in her first witness statement. She said that, because there was no joint byline and no relevant note in her notebooks, she thought it unlikely that she had been involved in writing the story, although she may have helped in second-sourcing it. She said that she had "*excellent sources*" close to both Jemima Goldsmith and Ms Hurley who regularly gave her reliable information. She was shown a payment record revealing a payment to Lee Harpin on the same date as the Article with the description "*Jemima & Hugh*". She said that he occasionally contacted her with

tips when freelancing and that she would have questioned him as to the provenance of his information and worked hard to second-source it. She added that it was possible that Ms Newbon had been given the story to write up by the News Desk because the story was founded in part on new photographs of Mr Grant leaving Ms Khan's house, and that it was possible she had been asked to help Ms Newbon obtain further information because of her own sources close to Ms Khan.

696. In her second witness statement, Ms Nicholl returned to this Article. She referred to the £1,000 payment to Lee Harpin recorded against "*Jemima and Hugh*" and said that the sum was not surprising for a page 7 news lead. She said that, if she had received information from Mr Harpin, she would have asked him where it had come from and would have wanted to be satisfied that it came from a reliable source. She rejected the suggestion that the reference to the "*heart-to-heart telephone conversation*" necessarily pointed to voicemail interception or itemised phone billing data, explaining that this was the sort of material her contacts often had because people gossiped about what had been said on the telephone, and sometimes because one of the participants in the call later recounted it directly. She said she was not aware of voicemail interception at this time and therefore would have had no reason to suspect information could have been obtained in that way.

697. Ms Nicholl was also shown notebook material which appeared to concern the general subject of Mr Grant and Ms Khan dating. She said that this seemed to her to be the kind of information that would have come from someone close to Ms Khan and that the note "*friend of Jemima, Lee getting more info*" suggested Mr Harpin had told her that he had a source who was a friend of Ms Khan.

(c) The parties' submissions

698. The Claimants submit that the critical feature of the Article is the report of the "*heart-to-heart telephone conversation*" and the assertion that Ms Hurley had encouraged Mr Grant to "*stop hiding*" his relationship with Ms Khan. Relying on Ms Hurley's evidence that conversations of that kind were private, on the payment to Mr Harpin, on Mr Dillon's evidence, on what is said to be Ms Nicholl's propensity to use unlawfully obtained information, and on the carefully limited language of Ms Murphy's hearsay statement, the Claimants submit that the proper inference is that Mr Harpin obtained the information through unlawful interception and that it then found its way into the Article.

699. Associated submit that the Article can be explained without resort to any unlawful method. They rely on the facts that: (i) parts of the story were plainly based on observable events, namely photographs of Mr Grant leaving Ms Khan's home; (ii) Ms Hurley was likely, on her own evidence, to have had the conversation attributed to her; (iii) Ms Murphy's evidence points to lawful sourcing from someone in Ms Hurley's social circle together with background material from press cuttings; and (iv) Ms Nicholl's evidence was that information about telephone conversations was the sort of material she commonly received from social and showbusiness contacts without any reason to suspect illegality. Associated further submit that the payment to Mr Harpin establishes no more than that he contributed information to a story about Mr Grant and Ms Khan; it does not prove that the information was unlawfully obtained, let alone that Ms Newbon (or Ms Nicholl) knew it to have been.

(d) Discussion and conclusion

700. I accept Ms Hurley's evidence that she and Mr Grant did have private telephone conversations about his relationship with Ms Khan and that she did, broadly, hold the views attributed to her in the Article. However, in her evidence, Ms Hurley referred to conversations with Mr Grant, not voicemail messages left for him. That evidence establishes that the Article contained true private information. It does not, however, resolve the question whether that information was obtained by unlawful means.

701. In my judgment, the Claimants have not proved that it was. The evidence demonstrates that Mr Harpin contributed to a story about Mr Grant and Ms Khan published on the relevant date. It may well be that he was an important source for it. Mr Dillon's evidence, taken at its highest, does no more than leave open the possibility that, in his role on the News Desk, he may have been involved in the discussion or investigation of the story. But there is no direct evidence that, for this Article, Mr Harpin intercepted voicemails (or obtained itemised billing data), and Mr Dillon did not identify any specific unlawful act in relation to it. There is no contemporaneous document identifying the "*heart-to-heart telephone conversation*" as hacked material. There is no note, email or witness evidence tying the disputed information to any specific unlawful act. The Claimants' case therefore depends on inference.

702. I accept that the Article's reference to the content of a private telephone conversation can give rise to suspicion. But suspicion is not enough. This was a diary/showbusiness context in which information frequently moved through chains of gossip and social contacts. Ms Hurley herself plainly held and expressed the views attributed to her. On the evidence, it is entirely possible that the gist of what she had said was repeated within the relevant social circle. Ms Murphy's hearsay evidence, although of limited weight because it was not tested in cross-examination, is consistent with that possibility. She said she would have sought comment or insight from the only person she knew in Ms Hurley's and Mr Nayar's social circle and would have supplemented that with background cuttings. Ms Nicholl's evidence is to similar effect. Although her recollection is limited, and in parts necessarily reconstructive, it is not implausible that information of this kind could have reached either her or Ms Newbon from a source close to Ms Hurley or Ms Khan without any unlawful interception.

703. I also do not accept that any adverse inference should be drawn against Ms Murphy from the careful terms in which she addressed Lee Harpin. At its highest, her statement shows an absence of present recollection and a refusal to overstate matters she could not remember. It does not establish that she in fact used him, still less that she knew or suspected that any information attributable to him had been unlawfully obtained. On the contrary, her evidence was that, had she been asked to use material from him, she would only have done so in good faith.

704. Nor does the evidence concerning Ms Nicholl carry the Claimants far enough. Even assuming that she may have had some role in second-sourcing or contributing to the story, and even taking into account the payment to Mr Harpin, there is a missing step between those matters and the pleaded allegation of phone hacking by Mr Harpin in relation to this Article. That step has not been proved.

705. In those circumstances, I am not satisfied, on the balance of probabilities, that any information in the Article was the product of phone hacking by Mr Harpin. I am equally

not satisfied that Ms Newbon (now Ms Murphy) or Ms Nicholl knew that any information in the Article had been unlawfully obtained. Ms Hurley's claim in respect of this Article therefore fails.

(23) *"Liz: why I'll never have another baby unless I can marry the father"*: *Mail on Sunday* 1 August 2004 (Katie Nicholl)

706. This is the tenth Article relied upon by Ms Hurley in her claim.

707. This Article was published in *The Mail on Sunday*, on 1 August 2004, as a short Diary item on page 19, written by Katie Nicholl. It reported that Ms Hurley had told friends that she was desperate to have another baby and wanted a sibling for her son, Damian, but that, after her experience with Steve Bing, she was adamant that she would not have another child out of wedlock. The Article further stated that Ms Hurley and Arun Nayar had spoken "*in depth*" about starting a family of their own. The information was attributed to "*a friend*".

(a) The issues

708. The issue raised by this Article is whether Ms Hurley has proved, on the balance of probabilities, that information in the Article – in particular, the report of her private views about having another child and her discussions with Mr Nayar about starting a family – was obtained by UIG. In this instance, the unlawful mechanism alleged by the Claimants was that the Article was the product of information unlawfully obtained by Gavin Burrows. The Claimants' case was that the information was obtained by a hardwire tap of a telephone call from Ms Hurley to a friend and by voicemail interception. The further allegation was that the material was passed into the newspaper through Paul Henderson and/or otherwise came to be used by Ms Nicholl in the Article.

(b) The evidence

709. Ms Hurley's evidence was that the matters reported in the Article were private and that, if she had discussed them at all, it would only have been with a very limited circle. She was not cross-examined on this Article.

710. The Claimants relied heavily on the 29 March 2021 table of articles attributed to Mr Burrows and on passages in the August 2021 witness statement attributed to him, in which this Article was said to have been "*definitely*" the product of a hardwire tap of a phone call from Ms Hurley to a friend and voicemail hacking. However, when he was shown the Article in oral evidence, Mr Burrows said that he did not recognise it, denied any involvement in it, denied knowing where the quotations in it had come from, and rejected as untrue the suggestion put to him from the 2021 material that this Article had been obtained by him through a hardwire tap and voicemail hacking (see [A3.20]). He said that was merely "*banter*" and not true.

711. Mr Dillon dealt with the Article in his witness statement. His evidence was that he had no specific recollection of the Article or whether he had any involvement in sourcing it.

712. Ms Nicholl addressed this Article in her first witness statement. She said that, when the claim was brought to her attention, she refreshed her memory by looking at her

notebooks and identified a notebook entry, but that it did not remind her who the source or sources for the Article had been. She said that she could not specifically recall the source for the story that Ms Hurley wanted another child, but that she seemed to recall that Ms Hurley had told some of her inner circle that there was no way she would have another baby unless she was married. Based on her notebooks, and to whom she was speaking and paying for stories at the time, she said it was highly likely that the source was one of her regular Elizabeth Hurley contacts, EH10-A, who was the main source for many of her Hurley stories because that person had contacts close to Ms Hurley.

713. Ms Nicholl also said that she may also have spoken to EH10-B, a close friend of Ms Hurley, to seek guidance on the accuracy of the story. Ms Nicholl further explained that other information in the Article – such as the dispute over Damian's paternity, the fact that Ms Hurley wanted more children, that she was living with Mr Nayar, and public speculation about marriage – had already been reported and would have been taken from cuttings. She referred in this context to a *Harper's Bazaar* interview, from August 2002, in which Ms Hurley had said that she would love to have more children, but would like this to be within a relationship.

714. In her evidence, Ms Nicholl said that she understood the allegation to be that Gavin Burrows had carried out some unspecified illegal act in relation to this Article and had been regularly commissioned by Paul Henderson at *The Mail on Sunday*. She said that she did not commission Mr Burrows in relation to this Article, or at all, and had no reason to believe that any of the information provided to her by contacts or sources came from him. She added that she did not believe that she worked with Mr Henderson on this Article, because she had her own sources on the story. She said that the allegation was completely untrue, that she had not commissioned Mr Burrows in respect of this Article (or at all), and that he did not provide any of the information it contained. She maintained that she had never heard of or worked with Mr Burrows before being asked about him for these proceedings and that she had explained the sourcing of the Article to the best of her memory.

715. In cross-examination, it was put to Ms Nicholl that her suggested source, EH10-A, was merely speculation and that the information in the Article was too personal to have come from a legitimate member of Ms Hurley's circle. It was further put to her that the true explanation was that the Article contained information obtained by Mr Burrows through a hardwire tap and voicemail interception on the instruction of Mr Henderson, who then passed it on for use in the Article. Ms Nicholl denied that suggestion.

(c) The parties' submissions

716. The Claimants submit that the information in this Article was plainly private and that Ms Hurley's evidence establishes that it was not the sort of information that would have been available to journalists through legitimate channels. They rely on the 29 March 2021 Burrows table and the August 2021 witness statement attributed to Mr Burrows, in which this Article was specifically identified and said to have been obtained by a hardwire tap of a telephone call from Ms Hurley to a friend and voicemail interception. They submit that, notwithstanding Mr Burrows' attempted retraction at trial, those earlier materials were authentic and reliable and should be preferred. They further submit that Ms Nicholl's account of sourcing was speculative and should not be accepted, particularly given what the Claimants submit is her proven propensity to use unlawfully obtained information and the evidence concerning the use of private

investigators by the News Desk. They also rely on Mr Dillon's evidence about News Desk practice as part of the wider evidential picture.

717. Associated submit that the Claimants have failed to prove this claim. They emphasise that the mechanism alleged is Mr Burrows, but that in oral evidence he did not accept having anything to do with this Article and denied the truth of the words attributed to him about it. They submit that this specific Article was not put to Mr Henderson in cross-examination and that, in those circumstances, the Court should not make a finding that he commissioned Mr Burrows in relation to it or channelled material from him for use by Ms Nicholl. Associated further submit that Ms Nicholl gave a coherent and legitimate explanation for the sourcing of the Article: that she had well-placed Hurley contacts, that she may have checked the story with a close friend of Ms Hurley, and that background elements in the Article came from previous reporting and cuttings, including earlier published material about Ms Hurley's wish to have more children. They submit that there is no reliable evidence that any information in the Article was obtained unlawfully and no basis for finding that Ms Nicholl knew of any unlawful act.

(d) Discussion and conclusion

718. I accept that the Article contained private information concerning Ms Hurley's views about having another child and her relationship with Mr Nayar. The question, however, is whether the Claimants have proved that this information was obtained by the unlawful means alleged.

719. In my judgment, they have not. The mechanism specifically alleged in relation to this Article was Mr Burrows. For reasons I have already given elsewhere in this judgment (see Appendix 3), I have found Mr Burrows' evidence to be unreliable and upon which no safe conclusions can be based unless supported by other evidence. In relation to this Article specifically, his oral evidence did not assist the Claimants. Far from accepting involvement, he denied recognising the Article, denied having anything to do with it, and denied the truth of the statements attributed to him that it had been obtained by hardwire tap and voicemail hacking.

720. There is, moreover, an important forensic gap in the Claimants' case. Although the Claimants sought to maintain that Mr Henderson was the conduit by which material obtained by Mr Burrows found its way into the newspaper, this specific Article was not put to Mr Henderson in cross-examination. In those circumstances, it would be unfair, and in my view unsafe, to make a finding against him in relation to this particular Article.

721. By contrast, I accept Ms Nicholl's evidence as to the sourcing of the Article. It is true that her evidence was, inevitably, in part reconstructive. But that is not surprising given the passage of time. Her account was that she had several Hurley sources, that one of them was highly likely to have been the source of the new information in the Article, that she may also have sought guidance from a close friend of Ms Hurley, and that the background material came from cuttings and prior reporting. That explanation is coherent and inherently plausible in the context of a short diary item of this kind. It is also consistent with the fact that some of the material in the Article was plainly capable of being derived from earlier public reporting, while the remainder was the sort of information that could have circulated within a social circle without any resort to unlawful methods.

722. Mr Dillon's evidence takes the matter no further. He had no specific recollection of the Article or whether he was involved in sourcing it. That evidence does not bridge the evidential gap in the Claimants' case.

723. Standing back and considering the totality of the evidence, I am not satisfied, on the balance of probabilities, that any information in this Article was obtained by UIG by Mr Burrows or otherwise. Nor am I satisfied that Ms Nicholl knew that any information in the Article had been unlawfully obtained.

724. Ms Hurley's claim in respect of this Article therefore fails.

(24) "*Jude gives Sadie £10m divorce deal*": *Daily Mail* 2 October 2004 (Nicole Lampert)

725. This is referred to as the sixth Article relied upon by Ms Frost Law in her claim.

726. The Article was published in the *Daily Mail*, on 2 October 2004, under the headline "*Jude gives Sadie £10m divorce deal*", bylined to Nicole Lampert. It reported that Jude Law had agreed to give Ms Frost Law a divorce settlement, worth £10 million, and set out details of the alleged terms of settlement, including that Ms Frost would receive the former family home, school fees, nannies' costs and maintenance, £25,000 per month, a lump sum of £3 million and half the proceeds of a flat in Primrose Hill. The Article also attributed to a source, close to Ms Frost, comments that, after months of rows, she had decided to settle and put the bitterness behind her.

727. The pleaded case is the Article contained information concerning Ms Frost and Mr Law, including in relation to their divorce proceedings and financial arrangements that had been obtained unlawfully by Gavin Burrows.

(a) The issues

728. The issue is whether the Claimants have proved that any of that information was obtained by UIG for which Associated is responsible. The case originally pleaded in relation to this Article was, in substance, a Burrows case: namely, that the information had been obtained unlawfully by Mr Burrows, allegedly through interception of communications concerning the divorce negotiations, and had found its way into the Article. By the end of the trial, and in closing submissions, the way in which the Claimants sought to put the case had shifted in material respects. I return to that below.

(b) The evidence

729. The Article itself contained highly private information about the financial negotiations between Ms Frost and Mr Law. In her written evidence, Ms Frost said that although the figure of £10 million was inaccurate, much of the detail about the negotiations, including the £3 million lump sum, the detail about the house, the payment of school fees and the monthly payment, was substantially correct. She said that these were matters she would have discussed on her landline with her divorce lawyer, Raymond Tooth, and that the information was private. She had confided in only a limited number of people, such as close friends, her lawyers and possibly her agents. Ms Frost also said that Mr Law thought the information was being leaked by her, which caused further distress.

730. Jude Law also addressed this Article in his witness statement (see [A2.512]). He said that it was very likely that a £10 million divorce deal was close to being agreed, but that sounded to him less like the subject of a message and more like something overheard on a telephone call. He said that the financial information in the Article was all very specific and that, in his view, there was no way it could have been learnt other than by listening into a voicemail or tapping. He further said that he had left the settlement negotiations to his lawyers; that he may have talked to Sienna Miller about them, and perhaps to Ben Jackson, who worked for him at the time, but that he did not remember discussing them with his parents and had not spoken to his sister about them.

731. Ms Lampert said she remembered the Article because Jude Law had complained at the time that it was wrong to say that a deal had been reached. Her evidence was that the fact of the divorce negotiations, and the figure of £10 million, had been extensively reported elsewhere and that she would have taken that information from earlier reporting. As to the more specific information, namely that Ms Frost had decided to agree a deal and the structure of it, Ms Lampert's evidence was that this had been provided to her by Sharon Feinstein, who had obtained it from the same confidential source close to Ms Frost to whom Ms Lampert referred elsewhere in her statement. Ms Lampert identified, in particular, the quoted passages in the Article about Ms Frost having decided to "*turn a corner*", having "*started to mend bridges*" with Mr Law, and being happy with her new boyfriend as having come from that source.

732. Ms Lampert further stated, in her witness statement, that she did not know Gavin Burrows and had never worked with him; that she had never hacked or tapped a phone or asked anyone to do so; and that she did not know Paul Henderson before these proceedings and was never given stories by him. She added that the *Mail on Sunday* was the *Daily Mail*'s "*fierce rival*" and "*the last thing that they would do would be give us a story*". She also denied any use of JJ Services or Steve Whittamore in relation to the Article.

733. In cross-examination, Ms Lampert accepted that the Article contained very private details about the divorce negotiations. She also accepted that the headline proposition, that a deal had already been agreed, was wrong. When it was put to her that the true source of the information was unlawful interception of communications between Mr Law, Ms Frost and their lawyers, and that the inaccurate headline had been added as "*colour*" to disguise the true nature of the source, she rejected that suggestion. Her evidence was that a more credible explanation was that there was a human source who had been told about the negotiations and had got one element wrong, namely that the deal had already been agreed. She said expressly: "*That bit was untrue. The rest of the story is true*". When it was put to her that the information had come from Mr Burrows via the news desk, she rejected that suggestion as "*fantasy*" and "*wrong*".

734. A further feature of the contemporaneous evidence is that there was a complaint and correction. In cross-examination, Ms Lampert was taken to the complaint made on behalf of Mr Law and to the published correction making clear that no settlement had in fact been reached. Ms Lampert's evidence remained that the source had got that aspect wrong, but that the underlying detail of the negotiations had come from a close human source via Ms Feinstein.

735. As for Mr Burrows, the Claimants relied on the allegation that he had admitted obtaining information for this Article by hardwire interception of a call involving

Mr Law and a family member. However, for the reasons I have already given elsewhere in this judgment (see Appendix 3), Mr Burrows' evidence is not reliable. I do not repeat those reasons here. It is sufficient to note that, insofar as the Claimants sought to rely on the Burrows mechanism in relation to this Article, that reliance encountered a further difficulty of particular significance in this case. In the version of Mr Burrows' account upon which they wish to rely, he says that his point of contact was Mr Henderson, who worked for the *Mail on Sunday*, whereas this was a *Daily Mail* Article by Ms Lampert. Yet there was no cross-examination of Mr Henderson about this Article, notwithstanding that, if the Burrows mechanism were right, he would have had to have been the conduit through whom the information had been commissioned and passed on. Even then, no satisfactory explanation was given as to how information allegedly obtained by Mr Burrows for Mr Henderson at the *Mail on Sunday* came to be used in a *Daily Mail* article by Ms Lampert.

(c) The parties' submissions

736. The Claimants submitted that the Article contained confidential and largely accurate details of the divorce negotiations which were so private and specific that they could only realistically have come from unlawful interception of communications. They emphasised that the details of the proposed settlement were substantially correct, that Mr Law had complained to the newspaper before publication, and that the inaccurate assertion that a deal had been agreed was consistent with the newspaper adding a false gloss in order to publish the underlying details of negotiations. They also relied on the allegation attributed to Mr Burrows that he had obtained information for this Article by hardwire interception. In closing submissions, the Claimants further submitted, in substance, that the Article was published despite the pre-publication denial because the newspaper was confident in the strength of its underlying source material, and that the true explanation was that the detailed information had come through Ms Feinstein from unlawful interception, which Ms Lampert knew to be the case.

737. Associated submitted that the Claimants' case at trial became an unsustainable and unparticularised theory that Ms Lampert had either listened to voicemails containing legal discussions or had received Burrows product via the news desk, without any proper evidential foundation. Associated emphasised that Mr Henderson was not asked about this Article, despite the Claimants' pleaded case that he was Mr Burrows' sole point of contact at Associated. Associated also relied on Ms Lampert's evidence that the £10 million figure had already been reported, that the more specific narrative detail came via Sharon Feinstein from a strong source close to Ms Frost, and that Ms Lampert had denied knowing or using Mr Burrows. Further, Associated submitted that, insofar as the Claimants' closing submissions sought to advance a case that Ms Feinstein was herself obtaining information by voicemail interception or other UIG, and that Ms Lampert knew that to be so, that was not a case that had been pleaded or properly advanced at trial and was not open to the Claimants to adopt in closing.

(d) Discussion and conclusion

738. I am not satisfied that the Claimants have proved that the information in this Article was obtained by UIG for which Associated is responsible. I accept that the Article contained highly private information concerning the financial negotiations between Ms Frost and Mr Law. I also accept that much of that information was substantially

accurate. But those matters do not, without more, establish either the unlawful means by which the information was obtained or that any such UIG was carried out by, for, or on behalf of Associated.

739. The principal route by which the Claimants sought to prove unlawful acquisition of the information was the Burrows allegation. For the reasons I have already given, I do not accept Mr Burrows as a reliable witness. That conclusion applies here as it did in relation to Article (23). In my judgment, the Burrows mechanism is further undermined in relation to this Article by the complete absence of any cross-examination of Mr Henderson about it. If the Claimants' case were right, Mr Henderson would have been central to it. Yet the allegation that Mr Burrows was commissioned by Mr Henderson to obtain this information, or that Mr Henderson acted as the conduit by which it reached the *Daily Mail*, was never put to him in relation to this Article. That omission is important.

740. There is, moreover, a further difficulty which the Claimants have not satisfactorily addressed. Mr Henderson worked for the *Mail on Sunday*. This Article appeared in the *Daily Mail* and was written by Ms Lampert. The Claimants did not provide a coherent evidential explanation as to how information allegedly obtained by Mr Burrows for Mr Henderson at one title came to be used by a journalist at a different title. Ms Lampert's evidence that the *Mail on Sunday* was the *Daily Mail*'s "*fierce rival*" and that she was never given stories by Mr Henderson was clear. Although there are other possible routes, it is for the Claimants to articulate a coherent explanation and, in any event, on their case as to Mr Burrows, the route must include Mr Henderson, and no case was put to him.

741. Leaving aside the difficulties in the Burrows allegations, I accept Ms Lampert's evidence about the sourcing of the Article. I accept her denial that she used Mr Burrows or received information from him. I also accept her evidence that the broad background to the story, including the £10 million figure, had already been reported elsewhere, and that the more specific narrative detail came to her from Sharon Feinstein and Ms Feinstein's confidential source close to Ms Frost. I do not regard the fact that the source got wrong the proposition that a deal had already been agreed as undermining Ms Lampert's account to the point of rejection. On the contrary, it is consistent with her evidence that the source was a human source reporting, with some inaccuracy, what was being discussed. The contemporaneous complaint and correction show that the newspaper got that point wrong; they do not establish that the underlying information must therefore have been unlawfully intercepted.

742. I must, however, deal expressly with the way in which the Claimants' case shifted. The case originally pleaded in relation to this Article relied on Mr Burrows. In closing submissions, the Claimants sought, in substance, to advance a different case: namely, that Ms Feinstein was providing information obtained through voicemail interception or some other form of UIG, and that Ms Lampert knew that to be so. That was not a case that was pleaded. Nor was it a distinct case that was properly investigated at trial as a basis on which liability could be imposed on Associated in relation to this Article. Ms Feinstein was not a party to these proceedings, was not called as a witness, and has had no opportunity to respond to those allegations. The Court has not investigated them as part of the issues it had to decide, and I make no findings of fact in relation to them: see [61]-[62] above. In those circumstances, it is not open to the Claimants to invite findings on that unpleaded basis in closing.

743. Accordingly, I make no finding as to whether Ms Feinstein obtained information from a human source and passed it on to Ms Lampert, or whether the information, or any part of it, was obtained by some unlawful means. More specifically, I make no finding as to any alleged wrongdoing by Ms Feinstein herself. Those questions have not been investigated in a way that would permit or require a concluded finding. My task is to decide the case that was pleaded and properly advanced against Associated. On that case, the Claimants have not proved that the Article contained information obtained by UIG for which Associated bears responsibility.

744. Standing back and considering all the evidence, including the evidence of Jude Law as to the private and specific nature of the information, I am not persuaded that the Claimants have established, on the balance of probabilities, that any information in this Article was obtained by UIG for which Associated is legally responsible. The Burrows case in relation to this Article fails, and it is not open to the Claimants to substitute for it, in closing, an unpleaded allegation that Ms Feinstein was herself engaged in UIG, or that Ms Lampert knew that to be so. Ms Frost Law's claim in relation to this Article will therefore be dismissed.

(25) "*Harry Besotted with Chelsy, his first true love*": *Mail on Sunday* 28 November 2004 (Caroline Graham & Barbara Jones)

745. This is the fourth Article relied upon by Prince Harry in his claim.

746. The Article was published in the *Mail on Sunday*, on 28 November 2004, under the headline "*Harry besotted with Chelsy, his 'first true love'*", bylined to Caroline Graham and Barbara Jones. It identified Prince Harry's girlfriend as Chelsy Davy, described her as a 19-year-old South African student, and reported that Prince Harry had spent almost the entire trip at her side while staying at the El Remanso Polo Lodge outside Buenos Aires.

747. The Article attributed to sources at the Lodge descriptions of them behaving "*like any young couple in love*", referred to a hunting trip in Entre Rios, stated that Prince Harry had previously spent "*discreet weekends*" with Chelsy in Cape Town while working with AIDS victims in Lesotho, and reported that the couple had flown in and out together on a private plane. It also contained material said to have come from Cape Town, including that, when approached at the house she shared with other female students, Chelsy had confirmed: "*I have known Harry since I was at school*" and had said, "*I have heard people linking us together*".

748. The pleaded private information is information concerning Prince Harry's relationship with Chelsy Davy, including their private plans and thoughts. The pleaded case in relation to this Article contains two specific allegations: first, that Ms Graham unlawfully obtained Ms Davy's private flight plans, on or around 25 November 2004; and second, that Heather Briley, acting on behalf of Associated, commissioned a third party unlawfully to provide Chelsy Davy's surname, on or around 26 November 2004, and that this information was then used in the preparation of the Article.

(a) The issues

749. The issue is whether Prince Harry has proved, on the balance of probabilities, that information relied upon for the Article was obtained by UIG for which Associated is

responsible. In light of the pleaded case and the way the trial was conducted, the principal questions are: (i) whether the Claimants have proved that Ms Davy's surname was obtained through an unlawful enquiry directed at British Airways; (ii) whether they have proved that private flight information concerning Prince Harry and/or Ms Davy was obtained unlawfully; and (iii) whether, if those allegations are not established, the remaining content of the Article nevertheless permits an inference that it was the product of UIG.

(b) The evidence

750. Ms Graham said in her evidence that she remembered the story because it was a major exclusive. It was big news that Prince Harry had a serious girlfriend and that the *Mail on Sunday* had been first to identify her. She explained that she had been in Argentina on another assignment, but was then asked by the *Mail on Sunday* news desk to cover Prince Harry's visit there. She worked on the story with Heather Briley, who was in Argentina supporting her with translation and reporting.

751. Ms Graham's account was that she and Ms Briley used local contacts in Argentina, including a confidential source she identified as "DOS4-B", and local freelancers including Carlos Beer and Alejandro Sangenis, who had contacts in the polo world and at the El Remanso ranch. Through those contacts they established that Prince Harry was staying at El Remanso and that he was there with a blonde girl from South Africa. Ms Graham said that the information about what Prince Harry and Chelsy were doing at the ranch, including that they were staying together there, came from people working at or connected to the ranch, passed on through the local freelancers and contacts.

752. As to Chelsy Davy's identity, Ms Graham's evidence was that, at first, the name supplied through the ranch and local Argentine contacts was something like "*Chelsea Davies*" or "*Chelsea Davis*", and that this was how the name appeared in the developing drafts of the Article. Ms Graham said that the journalists on the ground were dealing with Spanish-speaking ranch staff and polo contacts, and that the initial form of the name was not exact. Her evidence was that the correct spelling – "*Chelsy Davy*" – and her South African nationality ultimately came from the ranch side of the story. In her witness statement she said she thought this information came from a flight manifest for the private hunting trip which a confidential source at the ranch had seen, and that the spelling and nationality were passed on verbally. The journalists never saw (and did not ask for) any underlying document.

753. Ms Graham also addressed the British Airways issue. She said that, once it was understood that Prince Harry's girlfriend might be travelling with him when he left Argentina, Ms Briley tried a contact of hers at British Airways, in Buenos Aires, to see if he would confirm her name. Ms Graham remembered that Ms Briley told her she was going to try and that some money was mentioned, but she did not believe that anyone pretended to be somebody else or did anything deceptive. Crucially, however, Ms Graham's evidence was that the information did not ultimately come from British Airways. In her words, they "*ultimately didn't get Chelsy's name*" from that British Airways contact; rather, the clarification of the spelling came from the ranch contacts.

754. In cross-examination, Ms Graham was taken in detail to the key emails on 25 and 26 November 2004, including:

(1) her email to Peter Wright saying: "*I should be getting the surname and more details from a contact later tonight to whom I have agreed to pay $1000 for the info*";

(2) her email to David Dillon stating, among other things, that "*Chelsea flew out with Harry … and is on the plane with him tonight … He is in First Class with his protection officers. I believe she is in Business. I only have the name Chelsea*"; and

(3) Ms Briley's email to Ms Graham: "*Have spoken to contact at British Airways here half an hour ago and offered $$ in return for name. He's gone off to investigate*".

755. That challenge formed part of a broader attack on Ms Graham's credibility. The Claimants relied not only on the British Airways emails, but also on what they described as "*propensity*" material arising out of Ms Graham's historical dealings with Dan Hanks, including documents containing Social Security numbers and a separate toll/call-records episode. They submitted that this made her account of benign sourcing in relation to this Article implausible. Ms Graham rejected that case. She maintained that, in her dealings with Mr Hanks, her objective had been contact details and background information, not unlawfully obtained material, and she denied ever asking for or using Social Security numbers.

756. In relation to this Article specifically, she firmly rejected the suggestion that the correct spelling of Chelsy Davy's name came from British Airways, maintained that the information came from ranch contacts, and denied, when it was put to her, that the information came from British Airways and that money was paid for it. She also said that, insofar as the email recorded class of travel and the assumption that Chelsy was on the same outbound flight as Prince Harry, some of that information later appeared to have been wrong, as there was no trace of Ms Davy arriving in London with Prince Harry. My assessment of Ms Graham as a witness is set out in Appendix 2 (see [A2.316]-[A2.329]).

757. Ms Briley, in her evidence, described working with Ms Graham in Argentina and using local contacts, including Alejandro Sangenis and others in the polo world, to find out where Prince Harry was staying and with whom. She said that staff at the ranch, reached through Alejandro, said Prince Harry was there with a blonde girl from South Africa. She also dealt with the photographs later published or used in the story, including the low-resolution photographs that had been sent to her.

758. On the identity point, Ms Briley's evidence was that the name initially supplied through the ranch contacts was not quite right: it was something along the lines of "*Chelsea Davis*" or "*Davies*". She said that she did have a British Airways contact in Buenos Aires, whom she knew socially and whom she telephoned, on 26 November 2004. In her witness statement, she said she did not think she had ever asked him for information before, and that, having reread the email, she accepted that she had asked him whether he could help her, but did not believe he ultimately gave her any information.

759. Before giving oral evidence, Ms Briley amended her witness statement to add that, having since read the transcript of Ms Graham's oral evidence, she was reminded that

local freelancers had been asked to go back to the ranch contacts to check whether they had the right person, and that one of Alejandro Sangenis or Carlos Beer eventually provided what turned out to be the correct spelling. She could not remember whether they said they got this from a flight manifest, but said she had a clear memory of being on the street and receiving the correct name, writing it down, and ringing Caroline Graham with it.

760. In cross-examination, Ms Briley was challenged at length on the British Airways email (see [754(3)] above) and on the timing of the evolution of her evidence. It was put to her that she had offered money to a British Airways employee to check the "*airline system*" for the precise identity and spelling of Chelsy Davy's name, and that this was how the name was obtained. She rejected that case. She accepted that she had contacted the British Airways contact and had offered "*$$ in return for name*" in the email, but denied that the airline contact ever checked the airline records and denied that he provided the information. She said that he told her he could not check the computers because the information was confidential, and she denied that the correct spelling came from him. Her evidence was that the correct spelling came later, on the Friday evening, from a ranch contact after she had repeatedly pressed for the name. In Appendix 2, I explain my assessment of Ms Briley (see [A2.411]-[A2.415]). I regarded her as an honest witness, although in some respects naïve.

761. Ms Briley was asked whether she knew whether Chelsy Davy in fact flew out on the British Airways flight the following day. She said she had no idea. She added that her understanding was that, when Prince Harry arrived in London, he was photographed alone, so that she believed at least some of the assumption in Ms Graham's email about the outbound flight arrangements had turned out to be incorrect.

762. Barbara Jones addressed the Article in her evidence. She said she remembered the story well. At the time, she was the *Mail on Sunday*'s Africa correspondent based in Cape Town. Her evidence was that the London news desk had by then obtained a photograph of Prince Harry with a blonde girl in Argentina, believed she was Zimbabwean, and tasked Ms Jones with finding her and approaching her. Ms Jones said she was given Chelsy Davy's name and her father's name by the news desk, and knew that her father was a prominent businessman in Zimbabwe. She also understood that Chelsy was living in Cape Town and attending university there.

763. Ms Jones said that, using the Telkom White Pages, she found a "*B.E.M. Davy*" at an address in Newlands, which she regarded as the likeliest match because she knew Chelsy's mother's name was Beverley and because the address was in an affluent area. She said that she did not use, and had no need to use, a private investigator or freelance journalist to assist her. She went to the Newlands address with photographer Tania Coetzee, rang the bell, and Chelsy Davy answered the door. She showed her the photograph and asked if she was Prince Harry's new girlfriend and how she had met him. Ms Jones said Chelsy was very flustered and said, as quoted in the Article, that she had known Harry since she was at school; she also said, "*I have heard people linking us together*". Ms Jones said that, after she left, she was instructed by the London desk to go back and confirm that the girl in the photograph was indeed Chelsy. She returned with the photograph, and this time a friend of Chelsy's came to the gate and confirmed that it was Chelsy in the photograph; Chelsy herself then appeared again within the courtyard.

764. In cross-examination, Ms Jones was challenged principally on timing and on the apparent inconsistency between her evidence that she had been given the correct spelling of Ms Davy's name by the London desk and the fact that the draft article, sent on the Friday, still referred to "*Chelsea Davies*". Before giving evidence, she amended her witness statement to say that, having seen the draft article, what she had originally thought had happened on Saturday must in fact have happened on Friday. She accepted that the draft still used the spelling "*Chelsea Davies*", but maintained that, when she was instructed from London to locate Chelsy in Cape Town, she had been given the correct name and enough background information to find her. She also maintained her evidence that she used the Telkom White Pages and local background knowledge to locate the address. She was not cross-examined on any allegation that she herself had obtained information by unlawful means. In Appendix 2 I explain that I found Ms Jones to be an impressive witness whose evidence I accept (see [A2.416]-[A2.420]).

(c) The parties' submissions

765. The Claimants submit that the contemporaneous emails show that Associated had, by 25 November 2004, obtained accurate private flight information concerning Prince Harry and Ms Davy, including that they were on the same aircraft, had boarded separately, and were seated in different classes; and that this matched Prince Harry's evidence that Ms Davy travelled with him out of Buenos Aires and swapped seats with one of his protection officers. They submit that the most plausible explanation is that the information came from British Airways or its system, unlawfully accessed.

766. The Claimants further submit that the contemporaneous email from Ms Briley, of 26 November 2004 (see [754(3)] above), plainly records an offer of money to a British Airways contact "*in return for [the] name*", and that the obvious inference is that the contact checked the airline records and supplied the precise spelling of Chelsy Davy's name, which was vitally important to enable the story to be run. They submit that Associated's witnesses shifted their accounts, particularly after seeing each other's evidence, in order to avoid the obvious implication of the emails; that the late-emerging explanation about a ranch contact seeing a flight manifest is unsupported by contemporaneous documents; and that Barbara Jones' evidence about having been given the correct name sits uneasily with the fact that the contemporaneous draft article still used "*Chelsea Davies*".

767. The Claimants additionally rely on the suspicious circumstances of the photographs, including the cockpit photograph, and on the broader challenge to Ms Graham's credibility arising from the Hanks material and other "*propensity*" matters. They submit that the combined effect of these matters is that I should reject Associated's explanation and infer that the Claimants have proved the pleaded allegations of UIG.

768. Associated submits that the Claimants' case on this Article depends on speculation rather than proof. Associated emphasises the detailed account given by Ms Graham, Ms Briley and Ms Jones as to lawful sourcing. It submits that the broad story and much of the colour came from ranch staff and local Argentine sources; that the initial version of Chelsy Davy's name was supplied from that same legitimate source network, albeit inaccurately because of language difficulties; and that the correct spelling was later clarified from the ranch side of the story. Associated submits that the British Airways contact was tried and produced nothing.

769. Associated further submits that the emails about the outbound flight do not prove unlawful access to flight records. It relies on the evidence that some of the flight information in the emails turned out to be wrong, including the suggestion that Chelsy was on the same long-haul British Airways flight to London as Prince Harry. It also points out that no evidence was produced from British Airways itself. As to Barbara Jones, Associated submits that her evidence of finding the relevant address through the Telkom White Pages, armed with the correct surname and the father's notoriety in Zimbabwe, was straightforward and entirely plausible. Associated submits that, once the pleaded British Airways allegations are rejected, there is no sufficient basis for inferring any other form of UIG in relation to this Article.

(d) Discussion and conclusion

770. I am not satisfied that Prince Harry has proved that information connected with this Article was obtained by UIG for which Associated is responsible. I accept that the Article contained private information about Prince Harry's relationship with Chelsy Davy, including their being together at El Remanso and aspects of their movements and relationship. But the question is not whether the information was private. The question is whether the Claimants have proved unlawful acquisition by or on behalf of Associated.

771. The pleaded case in relation to this Article focused on two specific allegations: first, the unlawful obtaining of private flight information; second, the unlawful obtaining of Ms Davy's surname via a British Airways contact. In my judgment, the Claimants have not proved either.

772. I deal first with the allegation concerning Ms Davy's surname. The contemporaneous record clearly shows that, at the stage of the draft article, sent on 26 November 2004, the *Mail on Sunday* did not yet have the correct spelling of Chelsy Davy's name: the draft still referred to "*Chelsea Davies*". It is also clear that, by the next stage, the correct spelling had been obtained, and that Ms Jones in Cape Town was then able to locate Ms Davy using that name and the associated background information. The chronology is important. On Associated's evidence, the accurate spelling was obtained on the Friday and relayed in time for Ms Jones to make her enquiries in Cape Town. That chronology, in my judgment, is coherent and supports, rather than undermines, Associated's explanation. In cross-examination, the Claimants' case was expressly put to Ms Jones that she could not in truth have found Ms Davy "*through the phone book*" because the newspaper still did not have the correct surname at the relevant time. Ms Jones rejected that suggestion unequivocally, saying that she had been given the correct spelling in a telephone call from London and that "*it most certainly was through the phone book*" that she then located Ms Davy. I accept that evidence. The critical question is where that corrected spelling came from.

773. On that question, I prefer Associated's evidence. I accept the evidence of Ms Graham and Ms Briley that the name initially came from the ranch and associated Argentine contacts, in an inaccurate form, and that it was later clarified, again from the ranch side of the story. Ms Graham's account on this point was consistent in its essentials: the local contacts and ranch sources initially supplied some variant of "*Chelsea Davies*"; pressure continued to be applied to those sources; and the correct spelling was later obtained from them, possibly via a manifest for the private hunting trip which was seen by somebody at the ranch. Ms Briley's evidence, although plainly affected by the

passage of time and marked by some late refinement, was to the same core effect. The local freelancers and ranch contacts ultimately supplied the correct spelling, and the British Airways contact did not. In reaching that view, I have taken into account my assessment of both witnesses in Appendix 2.

774. I do not regard the British Airways email as proving that the name was supplied from someone at the airline. It proves that a British Airways contact was being tried as a possible route, and that money was offered if he could supply the name. It does not prove that the inquiry was successful. It is not to Ms Briley's credit that she was prepared to pay for this information, but the fact that an attempt was made does not establish that the information later used in the Article came from that attempt. On this point, I accept Ms Briley's evidence that the contact did not provide the information, and that the correct spelling came later from the ranch contacts. I also accept Ms Graham's evidence to the same effect. There was no evidence from British Airways itself and no evidence from the contact in question. The burden remains on the Claimants, and they have not discharged it.

775. In reaching that conclusion, I take into account the challenge made to the witnesses on the evolution of their accounts, particularly Ms Briley's late amendment and Ms Jones' change from Saturday to Friday. Those matters justify care, but they do not persuade me to reject the essential account. The broad narrative given by the three witnesses is coherent. The story was being reported from Argentina through ranch contacts and local freelancers. The name was initially obtained only approximately. Further pressure was put on the local source network, and the correct spelling was later obtained. Ms Jones was then sent to locate and confront Ms Davy in Cape Town. In my judgment, that account is more probable than the Claimants' proposed inference that the British Airways contact must have checked the airline's records and supplied the identity.

776. I also accept Barbara Jones' evidence that, once she had been given the correct name and background information, she identified the relevant address through public means, namely the Telkom White Pages, together with what she knew of the Davy family's prominence in Zimbabwe. That was a conventional journalistic step. Her direct approach to Ms Davy at the Newlands address and her obtaining of confirmation from Ms Davy and her friend provide a substantial, lawful explanation for the Cape Town aspects of the Article. I reject the Claimants' suggestion that Ms Jones could not in fact have been supplied with the correct name in time and therefore must have identified Ms Davy by some different means. That was expressly put to Ms Jones in cross-examination, including the proposition that it "*couldn't have been through the phone book*"; she rejected it, and no coherent alternative mechanism was ever put to her. Her evidence was that the correct spelling was communicated to her from London before she made her enquiries, and that, once armed with the unusual spelling "*Davy*", she was able, through the telephone directory and her Zimbabwe contacts, to identify the Newlands address quickly. I accept that evidence. I do not accept that her account of using the Telkom White Pages was untrue, or that her part of the story concealed some form of UIG.

777. I turn next to the flight information. The contemporaneous emails, on 25 November 2004, plainly show that Ms Graham believed that Prince Harry and "*Chelsea*" had flown out together, had boarded separately, that he was in first class with his protection officers and that she was believed to be in business class. I accept that this was private

information if correct. But the Claimants must prove not only that it was private, but that it was obtained unlawfully. They have not done so.

778. I do not accept that the evidence proves that this information came from British Airways. Ms Graham's evidence was that the information came from local freelancers and sources in Argentina, and she accepted that at least part of it later appeared to be wrong. Ms Briley, for her part, expressly said she had no idea where Ms Graham got the detail that Prince Harry was in first class and Chelsy in business class, and thought that information had turned out to be incorrect. The lack of evidence from British Airways is again notable. The evidence establishes no more than that there was an attempt to obtain confirmation of identity from a British Airways contact. It does not establish that private flight information was in fact obtained from him or from any airline system.

779. I should add this. The Claimants relied on later timetable material to show that the British Airways service from Buenos Aires to London involved a stop in São Paulo, from which Ms Davy could have taken a connecting flight to South Africa. I do not regard that material as assisting on the critical issue of sourcing: even if that airline routing was available, it does not show that the information in the Article was obtained from British Airways, still less unlawfully. It is, however, of some limited relevance to chronology. It provides a possible explanation for why Ms Davy was not seen by photographers awaiting Prince Harry's arrival in London, while still being back in Cape Town in time for Ms Jones to make her enquiries there.

780. Moreover, the fact that some of the flight information in the emails appears not to have been correct weakens, rather than strengthens, the Claimants' case that the information must have come from an accurate and unlawfully accessed airline system. If the information had been obtained directly from such a system, one would ordinarily expect greater precision and reliability. Instead, the evidence suggests that, at least in part, the journalists and their contacts were piecing together information from what they were being told on the ground.

781. As for the remainder of the Article, much of it is readily explicable by Associated's evidence as to lawful sourcing. The material about Prince Harry and Ms Davy at El Remanso – that they were staying together there, how they appeared at the lodge, what they did at the barbecue, and the fact of the hunting trip – was the type of information that ranch staff and local contacts could have observed and reported. The local freelancers and sources were plainly working that story. The Cape Town quotations are explained by Ms Jones' direct contact with Ms Davy and her friend. Some elements of the Article, such as the reference to "*discreet weekends*" in Cape Town while Prince Harry was in Lesotho, are not tied with precision by the witnesses to a particular source. But the absence, after more than 20 years, of a complete source-by-source audit trail does not prove UIG.

782. I have had regard to the concerns raised by the Claimants about the cockpit photograph and other unusual features of the material. Those matters justify scrutiny, but they do not bridge the gap in proof. They do not enable me to conclude, on the balance of probabilities, that the information in the Article was obtained by unlawful means, still less that any such means were used by, for, or on behalf of Associated.

783. Standing back and considering all the evidence, I am not persuaded that the Claimants have proved the pleaded case on this Article. I accept Ms Briley's evidence that the correct spelling of Chelsy Davy's name was not obtained from British Airways, but ultimately from the ranch contacts as described in the evidence. I also accept Ms Jones' evidence that, once she had the correct name and the relevant family background, she located Ms Davy in Cape Town by conventional means. The claim in relation to this Article therefore fails.

(26) *"How Harry fell in love"*: *Daily Mail* 2 December 2004 (Rebecca English)

784. This is the fifth Article relied upon by Prince Harry in his claim.

785. The Article was published in the *Daily Mail*, on 2 December 2004, under the byline of Rebecca English. It was a feature article about the early development of Prince Harry's relationship with Chelsy Davy, published after the fact of the relationship had already become public. It opened with an anecdote that, while sitting around a campfire in Botswana, Prince Harry had spoken of having fallen in love with a girl in Cape Town. The Article went on to describe Ms Davy's background, the development of the relationship, her joining Prince Harry in Argentina, the time they spent together there, aspects of their social life in Cape Town, and the suggestion that, after he left, they kept in touch by mobile phone and email.

786. The pleaded case in relation to this Article is strikingly general. In his pleaded case, Prince Harry identifies the relevant information simply as details of his relationship with Chelsy Davy, including as to their plans. Elsewhere in the Re-Re-Re-Amended Particulars of Claim, the claim is advanced by reference to Associated's alleged habitual use of "*Unlawful Acts*" and, in the case of Rebecca English, by reference to her alleged regular commissioning of private investigators, such as Mike Behr. But the pleading does not identify, in relation to this Article itself, any specific act of voicemail interception, blagging, flight blagging or other particularised mechanism of UIG.

(a) The issues

787. The issue is whether Prince Harry has proved, on the balance of probabilities, that information in the Article was obtained by UIG for which Associated is responsible. More specifically, the questions raised by the pleaded case and the way the trial was conducted are:

(1) whether any proper evidential basis exists for concluding that the opening "*campfire*" anecdote was the product of voicemail interception or some other form of UIG;

(2) whether any of the remaining information in the Article – including the references to the Argentina trip, Cape Town visits, and the couple keeping in touch by phone and email – is shown to have been obtained unlawfully; and

(3) whether the Claimants' case in relation to this Article remained within the bounds of what was pleaded, or shifted during the trial into broader unpleaded allegations.

(b) The evidence

788. In his evidence, Prince Harry said that this Article concerned details of his relationship with Chelsy Davy, including their plans, and that information about his relationships was guarded by him "*the most zealously*". He said that this was in the early days of the relationship, that Ms Davy "*did not go round telling people*", and that he would not share private information with strangers around a campfire. He also said that it was upsetting that Associated had been the first to break much of the news concerning Ms Davy.

789. In cross-examination, Prince Harry was taken to an extract from his book, *Spare*, in which he described being around a campfire in Botswana and feeling an "*overwhelming need*" to see Ms Davy again. It was suggested to him that the incident described in the Article was recognisably the same incident as the one described in his memoir. He did not accept that. His evidence was that the people around the campfire on the occasion described in Spare were not "*three strangers*" but people he regarded as very close to him, including figures he described as akin to surrogate parents. He maintained that, if he discussed his relationship with Ms Davy around a campfire, that was in conversation with trusted people, not strangers, and he rejected the suggestion that the account in the Article was therefore likely to have come from one of those individuals.

790. Rebecca English's evidence was that the Article was put together from several different sources. In her first witness statement, she said that the opening campfire anecdote had been passed to her by Sam Greenhill, who had dealt with a tip received by the News Desk. She further said that the information about the Argentina trip, some of the background material about Ms Davy and her family, and other elements of the story came from a mixture of previously published reports, local stringers, South African contacts, and confirmation from the Palace press office that Ms Davy had been with Prince Harry in Argentina. She also said that the line that the couple kept in touch by mobile phone and email was her own inference from the fact that it was, as she understood it, a long-distance relationship.

791. When cross-examined, Ms English maintained that account. She accepted that some details in the Article were not reproduced word-for-word in the cuttings she had retained, but her evidence was that the piece was a composite feature drawing on a combination of published reporting, lawful background enquiries, local contacts and tip material, rather than on any single source. So far as the campfire anecdote was concerned, she said that it had been passed to her from the News Desk, via Sam Greenhill, and she rejected the suggestion that it had been obtained by unlawful means. She also rejected the suggestion that the reference to the couple keeping in touch by mobile phone and email was based on billing data or similar material, explaining that it was simply an obvious inference to draw in the context of a developing relationship conducted across different countries.

792. Mr Greenhill's evidence was that, although he did not recall the Article itself, he did remember the specific "*campfire*" aspect because he had spoken to the person who provided that tip to the *Mail*. He said that the News Desk had received a tip about Prince Harry; that he was asked to look into it; and that he spoke on the telephone to a man who said that he had been in Botswana, at the same place as Prince Harry, and recounted what Prince Harry had said around a campfire about having fallen in love with a girl

from Cape Town. Mr Greenhill said that he took that information and passed it back to the News Desk, or to Rebecca English, and that this was the end of his involvement. He denied having engaged in or commissioned phone hacking or phone tapping.

793. In cross-examination, Sam Greenhill was challenged first on the basis that the supposed tip never existed. After the Court sought clarification of the precise allegation being advanced, it was then put to him directly that the campfire information had in truth been obtained by listening to voicemails of what Prince Harry was discussing with Chelsy Davy. He rejected both suggestions emphatically. He maintained that the call did occur and said that, while he no longer remembered the exact quotations used in the Article, the quotations in the published piece were consistent with what he remembered being told.

(c) The parties' submissions

794. The Claimants submitted that Associated's explanation for the sourcing of this Article did not withstand scrutiny. They relied on Prince Harry's evidence that information about his relationships was guarded particularly closely, that Ms Davy did not go round sharing private details, and that he would not have discussed such matters with strangers around a campfire. They submitted that the opening Botswana anecdote could not credibly have come from an unidentified caller, that several matters in the Article were not traceable to the cuttings or other materials relied on by Rebecca English, and that the proper inference was that the unexplained items of information had been obtained unlawfully. They also emphasised that the campfire anecdote was only one part of the Article, and that there was no credible lawful explanation for a number of other specific matters, including the statement that Prince Harry had secretly paid for Ms Davy to fly to Argentina, the references to a private plane and its cost, the Robben Island trip, the statement that the couple kept in touch by mobile phone and email, and the private jet trip to Entre Rios. They submitted that, apart from the campfire issue, Prince Harry's evidence that such matters were private and closely held had not been challenged in cross-examination. They further submitted that the campfire material was more likely to have been obtained by unlawful means, including voicemail interception, and relied on what they described as the propensity of Ms English and Sam Greenhill to commission UIG.

795. Associated submitted that the claim in respect of this Article should be dismissed. It submitted that no specific unlawful act, and indeed no particulars of UIG, had ever been pleaded in relation to this Article; that Rebecca English had given a coherent and legitimate account of how it was sourced; that the campfire anecdote was passed to her from the News Desk as a tip checked by Sam Greenhill; and that the remainder of the Article was capable of being assembled from prior reporting, lawful background enquiries, local stringers and ordinary feature-writing inference. It further submitted that the allegations advanced at trial – including references to Mike Behr, blagging, itemised billing data and voicemail interception – went materially beyond the pleaded case and should be rejected. In particular, it submitted that the allegation eventually put to Mr Greenhill, namely that he had obtained the campfire material by voicemail interception, was a wholly new and unheralded allegation. Associated also relied on what it described as the wealth of prior reporting concerning the relationship, and on the fact that a campfire episode of broadly that character later appeared in Spare, submitting that the event itself plainly occurred and that the Claimant's case impermissibly sought to transform issues of sourcing and accuracy into proof of UIG.

(d) Discussion and conclusion

796. In my judgment, Prince Harry has not proved that the information in this Article was obtained by UIG. The starting-point is that, unlike some other Articles, no specific unlawful act was pleaded in relation to it. That matters. The Court must determine the case that was pleaded, not a materially different case developed during cross-examination or closing submissions. In this instance, the challenge to the Article shifted during the trial into a series of broader and more serious suggestions – that some of the information came from Mike Behr, or from blagging, or from itemised phone billing data, or from voicemail interception – none of which was properly articulated in the pleaded case in relation to this Article.

797. I accept the evidence of Rebecca English and Sam Greenhill about the opening campfire anecdote. Mr Greenhill gave a clear account of having been asked by the News Desk to check a tip from a man who said he had been present in Botswana and had heard Prince Harry speaking around a campfire about a girl from Cape Town. My assessment of Mr Greenhill as a witness is in Appendix 2 (see [A2.425]-[A2.437]). Ms English's evidence, that this material was passed on to her and used as the opening anecdote in the feature, was consistent with that account. The cross-examination did not expose any positive basis for concluding that this evidence was fabricated.

798. What was eventually put to Mr Greenhill, after the Court had required clarification of the allegation being advanced, was that the information had in truth come from "*listening in to voicemails*" of what Prince Harry was discussing with Chelsy Davy. That allegation was not merely unsupported by documentary or other evidence; no coherent mechanism for it was ever articulated. No explanation was given as to whose voicemail was supposedly intercepted, by whom, or how such a message would have contained the detail that appeared in the Article. Set against the straightforward account advanced by the defence witnesses – namely, that a caller contacted the News Desk with a tip which was passed to Mr Greenhill to check – the suggestion was unsupported and inherently implausible. I reject it.

799. Nor do I accept that the remainder of the Article compels an inference of UIG. The evidence of Rebecca English was that the Article was a composite feature, assembled from several lawful sources: prior reporting, local stringers, South African background material, information about Ms Davy and her family, and Palace confirmation that she had been with Prince Harry in Argentina. By the time this Article was published, the fact of the relationship was already public, and this was not a first "*reveal*" story but a follow-on feature about a relationship that had already entered the public domain. In those circumstances, there is nothing inherently surprising in a newspaper being able, by ordinary journalistic inquiries, to gather additional colour about where the couple had gone, what they had done and how they were perceived by those around them. Once a relationship of this kind is publicly known, social and background detail of that kind is capable of being picked up by entirely conventional journalistic means. This was not a hard-news article dependent on a single exclusive source. It was a broad feature drawing together several strands about the relationship and giving them a narrative shape. In that context, I do not regard it as suspicious that particular details in the Article cannot now be traced exactly to one cutting or one surviving note.

800. I also accept Ms English's evidence that the line stating that the couple kept in touch by mobile phone and email was her own inference. In the context of a long-distance relationship, that was an obvious inference to draw. The Claimants' suggestion that this line must therefore have derived from billing data or other unlawful acquisition rests on speculation, not proof.

801. More broadly, this Article is another example of the difficulty caused by the movement of the case from what was pleaded to more serious and unpleaded allegations advanced during the trial. That is particularly apparent in relation to the suggestions that information in the Article was obtained from billing data, blagging or voicemail interception. Those were serious allegations. They were not supported by a properly articulated pleaded case or by evidence capable of sustaining them in relation to this Article. In those circumstances, I do not accept them.

802. Drawing the evidence and submissions together, I am satisfied that Prince Harry has not proved, on the balance of probabilities, that the information in this Article was obtained by UIG. I accept the evidence of Rebecca English and Sam Greenhill. The claim in respect of this Article therefore fails.

(27) *"Crazy Sadie v Moody Judey"*: *Daily Mail* 8 January 2005 (Paul Bracchi & Nicole Lampert)

803. This is referred to as the seventh Article relied upon by Ms Frost Law in her claim.

804. The Article was published in the *Daily Mail*, on 8 January 2005, under the headline "*Crazy Sadie v Moody Judey*", bylined to Paul Bracchi and Nicole Lampert. It was a feature article concerning the aftermath of Jude Law's engagement to Sienna Miller, and reported, among other things, that Ms Frost had reacted angrily to learning of the engagement through her son, that she and Mr Law then had a furious row by telephone, that Mr Law swore at her during that conversation, that Ms Frost regarded him as "*Moody Judey*", and that she expected to receive substantial financial provision in the divorce settlement, including the former matrimonial home, periodical payments and a lump sum.

805. The pleaded case was that the Article contained private information concerning Ms Frost and Mr Law, including information about their private communications and divorce arrangements, and that such information had been obtained by UIG. As originally pleaded, the UIG alleged in relation to this Article was the use of TPIs. By the end of the trial, however, the way in which the Claimants sought to put the case had shifted materially.

(a) The issues

806. The issue is whether Ms Frost Law has proved that any of the information for this Article was obtained by UIG for which Associated is responsible. More specifically, the case originally pleaded was, in substance, a TPI case, relying upon the existence of payments to ELI, Steve Whittamore/JJ Services and System Searches in temporal proximity to the Article. At trial, however, that case was not pursued to any developed conclusion against either Ms Lampert or Mr Bracchi. Instead, in cross-examination, the Claimants advanced a different case: that Ms Lampert herself had listened to voicemails, and had thereby obtained the information said to appear in the Article.

In closing submissions, the Claimants also sought to suggest wrongdoing on the part of Sharon Feinstein. Those shifts in the way the case was put require separate attention.

(b) The evidence

807. The Article undoubtedly contains private information. In her witness statement, Ms Frost Law said that after hearing from her son that Mr Law had become engaged, she had a row with Mr Law over the telephone about the way in which she had found out; that a good deal of their communication at the time was conducted through telephone calls and voicemails; and that she also spoke to close friends by landline and voicemail about these matters. She said the Article contained private, sensitive and distressing information about confidential discussions which ought never to have appeared in print. Her evidence on this Article was not challenged in cross-examination. Her evidence establishes that the subject-matter was private and that communications of this kind did occur. But it does not, without more, establish how the information that found its way into the Article was obtained.

808. Jude Law also addressed this Article in his witness statement. He said that the information in it was "*all painfully specific, true and very private*" and that, at this stage, he and Ms Frost were largely communicating by voicemail. He said that he believed the parts of the Article concerning Ms Frost's anger about his engagement to Sienna Miller, her learning of it through Rafferty, and the arguments that followed were derived from those communications. His evidence on this Article, like that of Ms Frost Law, was not challenged.

809. Ms Lampert said that she did not specifically recall the Article, but that, given the way she and Mr Bracchi usually worked, she would have gathered the information, and he would have written it up. Her evidence was that the Article was a typical Saturday feature summing up the week's news. She said that the information about Mr Law's engagement, and the suggestion that Ms Frost herself might remarry, would have come from earlier reporting. The further material in the Article about Ms Frost's reactions, her record of arguments with Mr Law, her nickname for him, and the divorce settlement would, she said, have come from Sharon Feinstein, who in turn had obtained it from the same confidential source close to Ms Frost upon whom Ms Lampert said she had relied in other Sadie Frost stories. Ms Lampert said that Ms Feinstein was her only source on Ms Frost; that the source was close enough to have access to this sort of information; and that she did not recall using ELI or System Searches in relation to the Article. She also denied ever instructing JJ Services/Steve Whittamore. In oral evidence, when it was put to her that she herself had listened to voicemails, she denied it.

810. Mr Bracchi also had only a limited recollection of the Article. His evidence was, however, clear in one important respect. He said that at the time he was a feature writer in *Femail*, whereas Ms Lampert was the Showbusiness Editor and had the relevant contacts. He said his best recollection was that the information for the Article came from one of Ms Lampert's contacts and was passed by her to him, and that his role was to turn that source material, together with the cuttings, into a feature piece. He said that he himself had no relevant showbusiness contacts for a story of this kind. He did not recall instructing ELI, and had never heard of ELI before the proceedings. Although he had used Steve Whittamore on other occasions for phone numbers, he did not recall instructing him in relation to this Article and thought it unlikely that he had done so, because he could not see who he would have needed to contact. He similarly said that

he did not recall using the Scotts/System Searches for this Article and thought that unlikely because, in his view, the material would most likely have come from Ms Lampert and from cuttings.

811. The Article itself supports the proposition that some of its content derived from public-domain reporting, and some did not. The existence of the engagement and aspects of the wider background plainly had already been reported elsewhere. But the Article also contains more particularised material about the telephone exchange between Ms Frost and Mr Law, what each supposedly said, Ms Frost's feelings about the engagement, and the detail of the continuing divorce arrangements. The fact that such matters were private does not, however, mean that they must have been sourced by unlawful interception. It remains necessary to identify, on the balance of probabilities, the means by which the information was obtained and to determine whether Associated bears legal responsibility for that means.

(c) The parties' submissions

812. The Claimants submitted, in substance, that the Article contained information of such a private and specific character, particularly about how Ms Frost learned of Mr Law's engagement, the ensuing telephone row, and the detail of the divorce arrangements, that it was to be inferred that the information had been obtained unlawfully. They relied, as pleaded, on the cluster of payments to ELI, JJ Services and System Searches around the time of the Article, but at trial also advanced the case that Ms Lampert herself had listened to voicemails. In oral closing, they placed particular emphasis on the specificity of the account that Ms Frost learned of the engagement through Rafferty, and submitted that this materially exceeded the cuttings material. They further relied not only on Ms Lampert's use of ELI and the suggested involvement of Sharon Feinstein, but also on Mr Bracchi's prior use of JJ Services, Jonathan Stafford and Christine Hart as contextual support for an inference of UIG.

813. Associated submitted that the case ultimately advanced at trial was unparticularised and shifting. It emphasised that the original pleaded TPI case had not been properly pursued in cross-examination; that no surviving invoice or work record had been linked specifically to this Article; that Ms Lampert had denied using ELI, System Searches or JJ Services in relation to it; and that Mr Bracchi had said the material most likely came from Ms Lampert and cuttings. Associated submitted that the more natural explanation for the material not found in earlier reports was the human source described by Ms Lampert, via Ms Feinstein. It further submitted that it was not open to the Claimants, in closing, to convert the case into an allegation that Ms Feinstein was herself engaged in voicemail interception or other unlawful conduct; and that, even if suspicion were cast on Ms Feinstein's role, that would not establish that Ms Lampert or Mr Bracchi knew that any information had been obtained by unlawful means.

(d) Discussion and conclusion

814. I am not satisfied that Ms Frost Law has proved that any information in this Article was obtained by UIG for which Associated is responsible. I accept that the Article contained private information about Ms Frost's reaction to Mr Law's engagement, about communications between them, and about their ongoing divorce arrangements. I also accept that some of that information was more specific than mere generic background. But that does not, without more, establish that the information was obtained unlawfully,

still less by the particular unlawful means for which the Claimants seek to hold Associated responsible.

815. I begin with the case as originally pleaded. That was a TPI case. It relied upon the fact that there were payments to ELI, JJ Services and System Searches in some temporal proximity to the Article. But the difficulty with that case is that it was never developed by identifying any item of work, invoice or surviving document which could be linked to the information in the Article. Ms Lampert said that she did not recall using ELI or System Searches for the Article and had never instructed JJ Services. Mr Bracchi said he had never heard of ELI before these proceedings; did not recall using Steve Whittamore for the Article and thought that unlikely; and did not recall using the Scotts for it either. More broadly, his evidence was that the material for the Article was most likely supplied by Ms Lampert and the cuttings. In those circumstances, the original TPI case remained speculative. Suspicion generated by temporal proximity of payments is not enough. The Claimants were required to show an evidential link between some identified TPI activity and this particular Article. They did not do so.

816. I turn then to the different case put at trial: namely that Ms Lampert herself listened to voicemails. I reject that allegation. It was put to her in cross-examination and she denied it. There was no direct evidence that she had done any such thing. Nor was there sufficient circumstantial evidence to justify such a finding. The existence of phone calls and voicemails between Ms Frost, Mr Law and others, and the fact that the Article reflected private discussions, does not establish that Ms Lampert intercepted them. It is also entirely possible, as a matter of ordinary human conduct, that a person within Ms Frost's close circle might have been told of the argument and of the surrounding circumstances, and might then have passed that information on. That possibility does not prove Associated's case, but it does mean that the inference of voicemail interception by Ms Lampert is not a necessary or sufficiently compelling one. I accept her denial.

817. I also accept the broad thrust of the evidence of Ms Lampert and Mr Bracchi as to how the Article came to be written: namely, that it was a Saturday feature built from earlier reports and additional information supplied through Ms Lampert's channel. That does not require me to make any concluded finding about what Ms Feinstein's source was told, nor that every detail in the Article was necessarily accurate. It is enough to say that I am not persuaded that the only realistic explanation for the information is unlawful interception by Ms Lampert or unlawful work by TPIs.

818. Nor did the way in which the Claimants ultimately put the case solve the distinct difficulty of attribution and knowledge. Even if it were permissible to entertain suspicion that information may have reached Ms Lampert through Ms Feinstein, that would not, without a properly pleaded and investigated case, establish that Ms Lampert or Mr Bracchi knew that any information had been obtained unlawfully, still less by a means for which Associated is legally responsible.

819. I must, however, deal expressly with the way the Claimants' case developed in closing. In substance, they sought to suggest that Ms Feinstein was herself providing information obtained through voicemail interception or some other form of UIG, and that Ms Lampert knew that to be so. That was not a pleaded case. Nor was it a distinct case properly investigated at trial. Ms Feinstein was not a party to these proceedings, was not called as a witness, and has had no opportunity to answer

allegations of that kind. As I have already explained at [61]-[62], where allegations are made about individuals who are not parties and whose conduct has not been investigated as part of the issues the Court had to decide, I record the way the parties sought to advance their cases but, unless I expressly state otherwise, I make no findings of fact in relation to such allegations or such individuals. It is therefore not open to the Claimants to obtain findings in relation to alleged wrongdoing by Ms Feinstein in this Article on the basis of closing submissions alone.

820. Accordingly, I make no finding as to whether Ms Feinstein obtained information from a human source and passed it to Ms Lampert, nor as to whether any such information may itself have originated in some unlawful act by another person. Those questions were not part of a case that was pleaded and properly investigated in a way that would permit or require a concluded finding. My task is to decide the case that was pleaded and properly pursued against Associated.

821. Standing back and considering all the evidence, I am not persuaded that Ms Frost Law has established, on the balance of probabilities, that any information for this Article was obtained by UIG for which Associated bears legal responsibility. The original TPI case in relation to the Article was not proved. The later case, that Ms Lampert herself listened to voicemails, is rejected. And it is not open to the Claimants to substitute, in closing, an unpleaded allegation that Ms Feinstein was herself engaged in UIG, or that Ms Lampert knew that to be so. Ms Frost Law's claim in relation to this Article will therefore be dismissed.

(28) *"It's the Army or me, Harry"*: *Mail on Sunday* 6 February 2005 (Barbara Jones)

822. This is the sixth Article relied upon by Prince Harry in his claim.

823. The Article was published in the *Mail on Sunday*, on 6 February 2005, under the headline "*It's the Army or me, Harry*", bylined to Barbara Jones. This Article reported that Prince Harry's relationship with Chelsy Davy had reached a point of crisis. It claimed that Chelsy Davy had given Prince Harry an ultimatum that he should give up plans to join the Army if he wanted to spend more time with her; that she had telephoned him angrily after he said he could not visit her in South Africa because of family pressure; that she had criticised the Army as a "*pointless*" career and called him a "*wuss*" for allowing himself to be grounded after the Nazi-uniform incident; that he had called her from the costume hire shop and that she had encouraged the choice of outfit; and that there had been long, emotional telephone calls between them as the relationship came under strain. The Article also said that Ms Davy had quarrelled with a girlfriend, was in tears at home, and was increasingly anxious that Prince Harry might lose interest in her.

824. The information alleged by Prince Harry to have been obtained by unlawful means was "*details as to the Claimant's relationship with Chelsy Davy including as to their feelings and communications*".

(a) The issue

825. The issue is whether Prince Harry has proved that the information published in this Article was obtained by UIG, or unlawfully corroborated, rather than by lawful journalistic sourcing. Although the Article plainly contained information of a private

character, privacy alone does not prove unlawful acquisition. The burden remains on a claimant to establish, on the balance of probabilities, an article-specific route by which UIG occurred.

(b) The evidence

826. In his witness statement, Prince Harry said that the Article revealed details about his relationship with Chelsy Davy, including their communications and feelings, and in particular that she did not want him to join the Army and spend time with her, and that he called her from a shop when choosing a costume outfit. He said that the information was highly personal and sensitive, that he and Ms Davy were careful and suspicious, and that these were communications between the two of them. He said that the detail in the Article went to an extraordinary level and that, in his view, there was no innocent explanation for how it was known. He also said that publication of the story added pressure and distrust to the relationship and caused Ms Davy to distrust those around her.

827. Barbara Jones's evidence was that she did not write the copy but was involved in collecting information for the Article and passing it to the London news desk. Her account was that the source was Joe Osman, whom she described as a friend of Chelsy Davy's brother, Shaun Davy. According to her witness statement, he had contacted the news desk in London saying that he had access to Shaun and Chelsy Davy. On instructions from Sebastian Hamilton, she called him, arranged for him to fly to Cape Town, and put him up at the Radisson Hotel.

828. Ms Jones further said that, during the first week in February 2005, she took Joe Osman to Chelsy Davy's house in Newlands, saw him ring the bell, and saw him admitted to the house. She said he was inside for about 20 minutes and, when he came out, gave her some of the information which appeared in the Article. She said she took notes in her car and then telephoned Sebastian Hamilton, who pieced the story together in London. She also stated that she did not use a private investigator or freelance journalist to assist her.

829. In her witness statement, Ms Jones identified, as coming from Mr Osman, the core allegations that Chelsy Davy had given Prince Harry an ultimatum about the Army, had referred to a "*temper tantrum*", had criticised the Army career as "*pointless*", had said he was behaving like a "*wuss*", had encouraged the Nazi uniform, and had been in tears after a row with a girlfriend. She also made clear that she did not write the copy and that additional information in the Article, beyond what she described, was added in the newsroom.

830. A strikingly important feature of the evidence is the evidence of Rebecca English. In her first witness statement, she explained that one of her notebooks contained notes headed "*Ultimatum*" which, on being shown the article, she recognised as containing information consistent with it, including material about Chelsy Davy's dismay with Prince Harry apparently bowing to family pressure to join the Army and about her disagreement with a girlfriend. Rebecca English said that this information had been provided to her while she was in Cape Town by someone she thought was called "*Robert*" or "*Jo*", who had contacted the news desk offering information about Chelsy, Harry and their relationship.

831. Ms English went on to say that she spoke to that man on the telephone, made notes, and met him for coffee. She was sufficiently doubtful about his truthfulness that she asked him to prove his connection to the Davy family. Her evidence was that he took her to a house in Newlands, approached the front door, was invited inside, and stayed there for some time. She said, however, that she could not shake the feeling that he was untrustworthy, that she did nothing with the information he gave her, that she did not pass it on to anyone, and that she did not know until shown the article that Barbara Jones might have been offered the same information.

832. In her witness statement, Ms Jones also said that, after the visit to the house, she discovered that Mr Osman had been calling Rebecca English. She confronted him about that and later learnt from the photographer, Tania Coetzee, that she and Mike Behr had both spoken to Mr Osman and passed information from him to newspapers, including *The Mail on Sunday*. That, she said, made her furious.

833. As for David Dillon, his first witness statement does not identify any specific involvement in the sourcing of this Article. When shown the Article, he said that he did not remember it, but that, having read it, he assumed the information came from someone who knew Chelsy Davy. No allegation specific to this Article was put to Mr Dillon in cross-examination.

834. In his third witness statement, served during the trial, Prince Harry relied on hearsay evidence which, he said, had been confirmed to him by Mr Davy, namely that Chelsy Davy was not in the house when it was said that Joe Osman visited Shaun Davy, in February 2005. According to that account, Mr Davy was the only person present, let Mr Osman into the house because he said he knew Shaun from Mozambique and was dropping off a gift, and had never previously met, spoken to, or seen him. The Claimants rely on that hearsay account as undermining the suggestion that Mr Osman could have obtained the information attributed to him by speaking to Chelsy Davy as – according to Mr Davy – she was not present at the time of Mr Osman's alleged visit.

(c) The parties' submissions

835. Prince Harry's case, as advanced in closing, was in substance that the information in the Article was highly private; that Barbara Jones's account of Joe Osman was implausible; that only some of the quotations and details in the Article appeared in her witness-statement account; that Mr Osman was not truly a friend of Shaun Davy; that there were proximate payments to System Searches; and that the Court should look also to the propensity of the *Mail on Sunday* news desk, including David Dillon, to use UIG. In oral closing, it was further submitted that some of the information must have come from the news desk as well as from Joe Osman, and that this left room for an inference of unlawful acquisition or unlawful corroboration.

836. Associated submitted that there was no specific allegation of UIG in the pleaded case; that the supposed System Searches payments had nothing linking them to the Article beyond loose proximity in date; that no direct allegation of UIG was ultimately put to Barbara Jones; and that the Article-specific evidence supported the lawful source route because Rebecca English's notebook contained the same type of information from the same source figure, namely Joe Osman/"*Jo*"/"*Robert*". In oral closing, Associated submitted that the claim had become one about supposed news-desk voicemail

interception or unlawful corroboration, but that this was simply an article-non-specific propensity case and did not work.

(d) Discussion and conclusion

837. I accept the evidence of Barbara Jones. Her account provides a coherent source route for at least the core private allegations in the Article: namely, that they were provided by Joe Osman after he had been admitted to Chelsy Davy's house and had then spoken to Barbara Jones, who relayed the information to the news desk. Her evidence was not that she wrote the whole Article or that every line of it came from one source; on the contrary, she expressly said that additional material was added in the newsroom. That is not a weakness in her evidence. It is an orthodox acknowledgement of the distinction between collecting information on the ground and the eventual assembly of copy in the newsroom. The fact that not every element of the finished Article can be traced directly to her account of what Joe Osman said does not, without more, justify an inference that the balance was obtained by UIG. My assessment of Barbara Jones as a witness is set out in Appendix 2 ([A2.416]-[A2.420]), and I accept her evidence for the reasons there given.

838. More importantly, Rebecca English's evidence materially supports, rather than undermines, Ms Jones's account. It independently establishes that a man known to her as "*Robert*" or "*Jo*", who said that he knew Chelsy Davy and her brother, was offering substantially the same type of information to journalists in Cape Town at the material time; that he took her to a house in Newlands and was admitted; and that she made contemporaneous notes containing material consistent with the Article. Even though Rebecca English said that she distrusted him, and did not use the information, her evidence is powerful confirmation that the Joe Osman source route described by Barbara Jones was real.

839. I do not accept the hearsay account in Prince Harry's third witness statement, of what Shaun Davy is said to have recounted about Joe Osman's visit and whether Chelsy was present in the house, as a basis for rejecting Barbara Jones's evidence. It is a hearsay recollection of events more than 20 years earlier, said to have been confirmed only recently by Mr Davy, and it was not tested in evidence. By contrast, I accept Barbara Jones's direct evidence that she took Joe Osman to the house, that he was admitted, and that, when he emerged after about 20 minutes, she made notes of what he told her. I also regard it as significant that, when it was put to her that Chelsy Davy was not even in the house, her response was that there was "*a pack outside*", that journalists had come a long way and would have known if anyone had left the house, and that "*there's no way they would be all outside the house if they weren't there*". In my judgment, that evidence is likely to be correct. Given the intense press interest, the presence of numerous journalists outside the house strongly suggests that Ms Davy was present. I prefer that evidence to the untested hearsay account attributed to Mr Davy.

840. Even if, contrary to that conclusion, Chelsy Davy was not in the house when Mr Osman entered, that would not advance the Claimant's case on UIG. On that hypothesis, the position would simply be that Mr Osman had emerged and given Barbara Jones what purported to be an account from Ms Davy when in truth he had no proper basis for doing so. That would be a remarkable act of confection or manufacture on his part, and I do not think it likely. But even if it had occurred, it would not demonstrate UIG

by Barbara Jones, the news desk, or anyone else at Associated. On the contrary, it would mean that the journalists were deceived by a bogus human source.

841. I do not accept that the private character of the information is, without more, sufficient to justify an inference of UIG. The Article undoubtedly contained material of a private kind, including alleged communications and feelings within the relationship. But, as the evidence in this case demonstrates, it is also capable of having been sourced from a person presenting himself as close to the Davy family and shopping the story around to different journalists. Nor does the fact that some of the finished copy appears to go beyond the detail that Barbara Jones expressly attributed to Joe Osman bridge the evidential gap. Even if there was additional material contributed or shaped in the newsroom, that does not itself prove UIG. There still must be a plausible mechanism identifying what relevant information is said to have been obtained unlawfully and how. No such article-specific mechanism was established here. Privacy may make lawful sourcing more difficult; it does not reverse the burden of proof. Nor does the absence of a complete explanation for each sentence in the finished Article entitle the Court to infer unlawful acquisition.

842. Nor do I accept that the Claimant can bridge the evidential gap by reliance on a supposed propensity on the part of the News Desk, generally, or David Dillon, specifically. The article-specific evidence does not establish any unlawful act by Mr Dillon in relation to this story. His evidence went no further than that he did not remember the Article and assumed that the information came from someone who knew Chelsy Davy. No allegation specific to this Article was put to him in cross-examination. Even if there were other evidence capable of bearing on his general practices, that would not by itself prove UIG in relation to this Article. The same is true of the suggestion that, because there were payments to System Searches in temporal proximity, unlawful corroboration should be inferred: I have no article-specific evidential link between those payments and the information reported here.

843. It is also material that, as Associated pointed out in oral closing, no direct allegation of UIG was ultimately put to Barbara Jones. The case advanced in closing appears instead to have shifted to one of supposed news-desk voicemail interception or unlawful corroboration. I do not consider that such a shifting, article-non-specific case can properly overcome the positive evidence of a lawful source route which I accept.

844. Drawing these matters together, I am not satisfied that Prince Harry has proved, on the balance of probabilities, that the information in this Article was obtained by UIG or was unlawfully corroborated. I accept Barbara Jones's evidence as to the source route through Joe Osman. That route is independently reinforced by the evidence of Rebecca English. The reliance placed by the Claimant on the privacy of the information, on loose timing proximity to System Searches payments, and on a supposed propensity on the part of the news desk or Mr Dillon, does not fill the evidential gap. The claim in respect of this Article therefore fails.

(29)* "*Ronnie's torment: For nearly a year Ronnie Barker's son has been on the run from child porn charges*": *Daily Mail* 9 April 2005 (Stephen Wright & Richard Pendlebury)

845. This Article is not the subject of any claim by a Claimant. It is relied upon by the Claimants as part of their propensity case against Mr Wright, in support of the

contention that he used UIG, including through ELI/TDI, in connection with other Articles.

846. The Article was published in the *Daily Mail*, on 9 April 2005, and was bylined to Stephen Wright and Richard Pendlebury. The parts of the Article principally relied upon by the Claimants are the references to the 1999 credit-card transactions said to have led to police interest in Adam Barker, and the statement that, after he disappeared, none of his debit or credit cards had been used and no calls had been made on his mobile phone, save that calls to it met a recorded request to leave a text message.

(a) The issue

847. The issue is whether the Claimants have established, on the balance of probabilities, that the relevant information in this Article was obtained through UIG and that the Article therefore provides episode-specific support for their wider propensity case against Mr Wright. The Claimants' case is inferential. It relies principally on the nature of the information in the Article and on ledger entries showing payments to ELI for "*Barker enquiries*" shortly before publication.

(b) The evidence

848. In his witness statement, Mr Pendlebury said that he did not recall the specific Article, published more than twenty years ago, but he described the usual way in which he and Mr Wright worked together on long-form crime pieces. Mr Wright, as crime reporter, would obtain the lead and the core information. Mr Pendlebury, as feature writer, would then develop that information into a longer article using cuttings and other background material for context. Mr Pendlebury said that, having re-read the Article, he was confident that the information it contained would have resulted from an unofficial, off-the-record briefing to Mr Wright by a senior police officer in the case. He denied any involvement in, or knowledge of, unlawful methods and said that until these proceedings he had never heard of ELI or TDI or the individuals said to run them.

849. In cross-examination, Mr Pendlebury accepted that the relevant passages in the Article were written by him, but said that the underlying information had been provided to him by Mr Wright. This included both the passage referring to the 1999 transactions and the later passage stating that none of Adam Barker's debit or credit cards had been used and that no calls had been made on his mobile phone. He remained clear, however, that he had no recollection of the particular story and no knowledge, at the time or since, of any instruction to ELI or any other private investigator in relation to it.

850. Mr Wright also gave evidence about the Article. He said that he had followed the Adam Barker story on an ongoing basis after earlier reporting and that he had a confidential police source with oversight of the case who was authorised to speak to the media. He said that the same source had shared with him the contents of the letter Adam Barker had left for his parents and had briefed him on other aspects of the investigation, including how the police had come to focus on him, the credit-card transactions that had triggered interest, and the fact that, after he disappeared, he had not used his cards or his mobile phone. Mr Wright rejected the proposition that this information had been obtained through ELI or any other form of UIG, maintaining that it came from his police source.

851. Mr Wright accepted that he did, at times, use ELI, but his evidence was that it was used by him for lawful search work such as addresses, telephone numbers, county court judgments and genealogical research. He denied that ELI provided him with bank account details, call data or other unlawfully obtained information in relation to this Article. When shown the ledger entries for "*Barker enquiries*", dated 21 March 2005, he accepted that they may have related to him, but said that he did not know, after so many years, what those payments were for and was not prepared to speculate. He firmly rejected the suggestion that they reflected any attempt to obtain itemised call data or other financial information through unlawful means.

(c) The parties' submissions

852. The Claimants submit that the detail in the Article concerning Adam Barker's past credit-card transactions and, in particular, the assertion that after his disappearance none of his debit or credit cards had been used and no calls had been made on his mobile phone is inherently suggestive of unlawfully obtained financial and communications data. They rely on the fact that there are ledger entries for "*Barker enquiries*" to ELI shortly before publication, and submit that these are to be inferred to relate to this Article. They also rely on Mr Pendlebury's evidence that he had no idea Mr Wright used ELI or any private investigator, which (they say) supports the inference that any relevant activity was concealed.

853. Associated submits that the Claimants' case is speculative and that there is no proper basis to infer UIG from the Article. It relies on Mr Wright's evidence that the information came from a police source with oversight of the case and on Mr Pendlebury's evidence as consistent with the usual editorial division of labour between a crime reporter and a feature writer. In its written closing submissions, Associated submits that Mr Wright explained that the relevant details about Adam Barker's disappearance and the financial and telephone information were shared with him by an officer who thought there had been a sophisticated plot to aid his going on the run, and that this Article does not evidence any propensity on Mr Wright's part to commission UIG.

(d) Discussion and conclusion

854. I accept Mr Wright's evidence in relation to this Article. Although the information relied upon by the Claimants was specific, that does not of itself establish that it was the product of UIG. Mr Wright was an experienced crime reporter who had followed the Adam Barker story over time, and his account that he was being briefed by a police source with oversight of the investigation is, in the circumstances, entirely plausible. In a case concerning a fugitive whom the police were trying to locate, it is unsurprising that the question whether he had used his cards or mobile phone would be of direct interest to the police and could form part of an off-the-record briefing to a crime reporter.

855. I do not consider that the ledger entries for "*Barker enquiries*" to ELI shortly before publication provide a sufficient basis to infer that the relevant information in this Article was obtained unlawfully. Mr Wright accepted that the entries may have related to him, but he could not say what they concerned; nor is there any episode-specific evidence demonstrating that ELI supplied the particular information which appears in the Article. The Claimants' case therefore depends on an inference that, because ELI was used and

because the information was private and specific, the information must have come from UIG. In my judgment, that inference is not made good on the evidence.

856. Standing back, I find it more likely than not that the relevant financial and related information in this Article came from Mr Wright's police source or sources, and not from any form of UIG. It follows that this Article does not support the Claimants' propensity case against Mr Wright.

(30) "*The Jude v Sadie Show*": *Daily Mail* 30 June 2005 (Nicole Lampert)

857. This is referred to as the eighth Article relied upon by Ms Frost Law in her claim.

858. This Article, published in the *Daily Mail*, on 30 June 2005, under the headline "*The Jude v Sadie Show*", was bylined to Nicole Lampert. It reported on the continuing financial dispute between Ms Frost Law and Mr Law during their divorce proceedings. It opened with an account of an angry telephone argument between them the previous week and went on to describe, among other matters, the alleged terms for which Ms Frost Law was said to be contending in the financial proceedings; her supposed confidence in success; her search for a country cottage; allegations about the parties' respective attitudes to money and the children; and background material about the deterioration of their relationship.

859. The information relied upon by the Claimant as having been unlawfully obtained includes, in particular, the account of the telephone argument, the details of the parties' positions in the financial dispute, and the detail that Ms Frost Law had already mentally spent her anticipated winnings and had started looking for a country cottage as a weekend home.

(a) The issues

860. The issue is whether Ms Frost Law has proved, on the balance of probabilities, that the relevant information in this Article was obtained by UIG carried out or commissioned on Associated's behalf. The issue is not whether the information was private or intrusive: much of it plainly was. The question is whether the Claimant has proved the unlawful means alleged.

(b) The evidence

861. Ms Lampert said she did not remember this Article, but explained that she had covered the story intensively and would have drawn on earlier reporting and colleagues' coverage, as well as reviewing other newspapers' accounts at the time. She said that some of the information in the Article, including the more personal material, was either already in the public domain or almost certainly came from Sharon Feinstein, who was her usual source on Ms Frost Law stories and whose source was, she said, very close to Ms Frost Law. In cross-examination, when pressed specifically about the sleeping pills material, she said she believed she would have obtained it from Ms Feinstein, and that Ms Feinstein had told her who the source was and how that source knew the information. She denied using ELI, System Searches or JJ Services for the story.

862. She also addressed the appearance of two ELI payment entries (with "*NL LAMPERT ENQUS*") dated 17 June 2005, saying she did not recall what they related to, but that

they could not have related to this article because she would only start enquiries a few days before publication and ELI were paid weeks later, never before publication; she observed that the dated payments preceded publication by almost two weeks.

863. In cross-examination, Ms Lampert accepted that the Article contained private information and that some of the information was new; she maintained, however, that it came from a human source via Ms Feinstein and denied the allegation that she had obtained it by listening to voicemail messages, describing that allegation as "*completely wrong*". When it was put to her that the information might have been obtained through voicemails between Mr Law and Ms Frost Law, she rejected that suggestion.

864. Ms Frost Law, for her part, said in her witness statement that the Article went into detail about an argument she had had with Mr Law, their divorce negotiations and how she planned to spend any settlement; that this detail was frightening; that she had kept private discussion of these matters to a limited circle; and that she had also been keen to acquire a house in the country. She was not cross-examined about this Article.

865. Jude Law also addressed this Article in his witness statement. He said that the information in it – in particular the facts and figures concerning the financial dispute, the demands for the property and payments, and the request for receipts – was "*specific, and very, very accurate*". He also said that the Article's suggestion that he was "*behaving with Sienna Miller exactly the way he behaved with*" Ms Frost Law revealed a very personal insight at a time when his relationship with Ms Miller "*wasn't plain sailing*", and that he did not know how such information could have been known, save through access to private communications.

(c) The parties' submissions

866. The Claimants submitted that the information in the Article was highly private, detailed and inherently improbable as the product of lawful sourcing. In written closing, they placed particular emphasis on the opening account of the telephone row, the assertion that "*the usual threats had been made*", the detail of the parties' financial positions, and the statement that Ms Frost Law had already mentally spent her expected winnings and had begun looking for a country cottage as a weekend home. They relied on Ms Frost Law's evidence, which was not challenged on this Article, and on Mr Law's evidence that the information was highly specific and accurate. They also relied on proximate payments to ELI and other private investigators during the relevant period, submitting that those payments supported an inference that unlawful methods were used at least to corroborate the story.

867. In oral closing, the Claimants emphasised that this was a 2005 article falling within the period when ELI payments were being made; that the lawful explanation advanced by Ms Lampert changed during the course of her evidence; and that the combination of the exclusive detail, the restricted nature of the information, the proximate payment records, Ms Lampert's extensive use of ELI, and her reliance on Sharon Feinstein justified an inference that unlawful methods had been used.

868. More specifically, the Claimants' written closing submissions advanced two related propositions. First, they said that Ms Lampert would have wanted to check the information attributed to Ms Feinstein's source, particularly because, on their case, that source had previously provided inaccurate information in another article, and that she

would therefore have used ELI to obtain telephone bill information or otherwise to facilitate the unlawful acquisition of material. Secondly, and more radically, they submitted that the detailed information in the Article "*must rather have come from voicemail interception which Ms Feinstein carried out (as Ms Lampert knew) and passed on to Ms Lampert*". In oral closing, the Claimants also stressed their broader case that Ms Feinstein had assumed a much greater role in the evidence than had been reflected in the pleaded case, and they invited the Court to draw an adverse inference from the fact that she was not called.

869. Associated submitted that the Article was legitimately sourced. It relied on Ms Lampert's evidence that the fact of the divorce and settlement discussions had been widely reported elsewhere and that the more specific information came from Ms Feinstein's usual source in Ms Frost Law's circle, some of it possibly being confirmed by Ms Frost Law's PR, Meena Khera. Associated submitted that, in cross-examination, it became clear that the Claimant's real complaint concerned those parts of the Article not found in the prior reports, but that there was no proper challenge to Ms Lampert's evidence that this information came from Ms Feinstein's source. Instead, the case advanced at trial was that Ms Lampert would have checked the information by using ELI to obtain a telephone bill and, in addition, would herself have intercepted voicemail messages. Associated submitted that this case departed a long way from the pleaded case, which had rested speculatively on payment records to ELI, Steve Whittamore/JJ Services and System Searches.

870. In oral closing, Associated also developed the point that the Claimants' case on Ms Feinstein had shifted in a way that was procedurally and evidentially unsound. It submitted that, although Ms Feinstein had emerged in the evidence as an important source for stories by Ms Lampert and Ms Nicholl, no pleaded allegation had ever been advanced that Ms Feinstein had herself engaged in voicemail interception in relation to this Article. Associated argued that the case actually put to Ms Lampert was different: namely, that the suggestion she had sourced the information from Ms Feinstein was untrue and that Ms Lampert herself had obtained the information through voicemail interception. Associated submitted that it was not open to the Claimants, in closing, to invite the Court to make a finding that Ms Feinstein had intercepted voicemails and that Ms Lampert knew that to be so. It also submitted that, even on the Claimants' own formulation of adverse inference, they had not identified the critical further inference – namely that Ms Lampert knew that any information had been obtained unlawfully – and that no such finding could fairly be made against Ms Feinstein on an unpleaded case.

(d) Discussion and conclusion

871. I accept that the Article contained private information. It plainly included intrusive detail about the parties' communications, their divorce negotiations, and aspects of Ms Frost Law's intentions and state of mind. I also accept that Ms Frost Law's evidence as to the private and restricted nature of at least some of this information was not challenged in cross-examination. I further accept Mr Law's evidence that the financial figures and related details in the Article were "*specific, and very, very accurate*", and that the suggestion that he was behaving with Sienna Miller as he had with Ms Frost Law involved a very personal insight. But that does not, without more, prove that the information was obtained by unlawful means. The burden remains on the Claimant to

prove the unlawful mechanism alleged. In my judgment, that burden is not discharged in relation to this Article.

872. First, I accept Ms Lampert's evidence as to sourcing. Her account was that the new material in the Article came from Ms Feinstein, whose source was close to Ms Frost Law; and in oral evidence she maintained that position, whilst firmly denying that she herself obtained the information by voicemail interception. I accept that denial. The allegation that Ms Lampert had herself engaged in voicemail interception in relation to this Article was unpleaded, put to her in cross-examination for the first time, and without a proper evidential basis.

873. I also bear in mind the limited extent of Mr Law's evidence on mechanism. He said that the information was highly specific and private and questioned how it could have been known other than through access to communications. But he did not say that the particular details in this Article were necessarily contained in voicemail messages, nor does his evidence supply the missing article-specific proof that any such messages were intercepted by Ms Lampert, by Ms Feinstein, or by anyone acting on Associated's behalf.

874. Second, the payments relied upon do not provide the missing link. The pleaded case in relation to this Article was, in substance, a TPI/payment case. In Schedule B, the Article is described as concerning information as to the Claimant's relationship with Mr Law, including their divorce proceedings and financial arrangements; and, specifically, in relation to this Article, on proximate payments to ELI, JJ Services and System Searches, including two ELI payments said to bear the initials "*NL*". The difficulty for the Claimants is that temporal proximity alone is not enough. On the evidence before me, those payments are not evidentially linked to the preparation of this Article. In particular, Ms Lampert's evidence was that the two ELI entries, of 17 June 2005, could not have related to this story because, in accordance with ordinary practice, enquiries for a story of this kind would only be commenced a few days before publication and payments to ELI would not be made until after publication. More broadly, the existence of payments in the period does not provide a proper basis to infer that private investigators were used for this Article, still less that they engaged in UIG in order to obtain the information that appeared in it.

875. Third, I must deal expressly with the way Ms Frost Law's case developed in closing. I bear in mind that the pleading also contained a more general allegation that the apparent attribution in Articles to "*friends*", "*close friends*" or "*sources close to*" a claimant might be a misleading presentation concealing the true source of unlawfully obtained information. But that is not the same as a pleaded case that Ms Feinstein herself was engaged in voicemail interception or some other form of UIG in relation to this Article, and that Ms Lampert knew that to be so. That was not pleaded. Nor was it a distinct case properly investigated at trial. Ms Feinstein was not a party to these proceedings, was not called as a witness, and has had no opportunity to answer allegations of that kind. As I have already explained (see [61]-[62] above), where allegations are made about individuals who are not parties and whose conduct has not been investigated as part of the issues the Court had to decide, I record the way the parties sought to advance their cases but, unless I expressly state otherwise, I make no findings of fact in relation to such allegations or such individuals. It is therefore not open to the Claimants to obtain findings in relation to alleged wrongdoing by Ms Feinstein in this Article on the basis of closing submissions alone.

876. Standing back and considering the evidence as a whole, I am not satisfied that this Article was obtained by, or was the product of, UIG carried out or commissioned on Associated's behalf. The Claimant has not proved that the information in the Article was obtained by voicemail interception, itemised call data, or any other unlawful method. It follows that the claim in respect of this Article fails.

(31) "*Sadie's £6 million divorce*": *Daily Mail* 1 July 2005 (Richard Kay)

877. This is referred to as the ninth Article relied upon by Ms Frost Law in her claim.

878. This Article, published in the *Daily Mail*, on 1 July 2005, under the headline *"Sadie's £6 million divorce"*, was bylined to Richard Kay in the Diary. It reported that Ms Frost Law and Mr Law had reached a financial settlement after nearly two years of dispute. It stated that the agreement had been reached in telephone conference calls after both parties had been embarrassed by private details being aired in court; that confidentiality agreements had been signed; that Ms Frost Law would keep the former matrimonial home in Primrose Hill and receive further financial provision by way of lump sum and monthly payments; and that both parties were relieved to be able to move on. The Article also included material about Ms Frost Law's reaction to the settlement, Mr Law's position, and their respective new relationships.

879. The information relied upon by Ms Frost Law as having been unlawfully obtained includes, in particular, the assertions that a settlement had been reached in telephone conference calls, that confidentiality agreements had been signed, the detail of the financial arrangements, and the quotations attributed to a friend about Ms Frost Law being pleased with the outcome and Mr Law being relieved to put matters behind him.

(a) The issues

880. The issue is whether Ms Frost Law has proved, on the balance of probabilities, that the relevant information in this Article was obtained by UIG carried out or commissioned on Associated's behalf. As with the previous Article, the question is not whether the information was private or intrusive: much of it plainly was. The question is whether Ms Frost Law has proved the unlawful means alleged.

881. In relation to this Article, the Claimant's pleaded case combined a general allegation that the information in the various Articles had been obtained through Associated's habitual and widespread use of unlawful methods with an article-specific case based on payments. In particular, the Re-Re-Re-Amended Particulars of Claim alleged that, on or about 1 July 2005, Associated paid for four requests to ELI which were to be inferred to relate to the Claimant and to have been exploited or published in this Article. Reliance was also placed on a wider cluster of 57 payments within a short period of this Article to ELI, JJ Services and System Searches. The information said to have been obtained through unlawful acts was "*Information as to the Claimant's relationship with Jude Law, including in relation to their divorce, financial arrangements, and the Claimant's feelings*".

(b) The evidence

882. Mr Kay said in his witness statement that he did not remember this Article. He explained, however, that at the relevant time he was editing the Diary and had

located his notebook for 30 June 2005, the day on which he would have been working on the story. As there was no note in the notebook relating to Ms Frost Law, he believed that the story must have been given to him in written form by either the News desk or the Showbusiness desk. He said that this did happen, from time to time, where a story had already been written and verified elsewhere on the paper, and that in such circumstances it would ordinarily be cut down or rewritten into Diary style. He also referred to a story about Ms Frost Law's divorce published by the *Mirror* on the same day, and said that the existence of two similar stories on the same day suggested to him that the story was "*going around*", in the sense of being an authorised story, perhaps through Ms Frost Law's spokesperson or lawyer, although he could not now recall speaking to either. He denied commissioning ELI, Mr Whittamore/JJ Services or System Searches for the purposes of this Article.

883. In cross-examination, Mr Kay accepted that some parts of the Article were not found in the *Mirror* story, including the assertion that the couple had reached an agreement in telephone conference calls after private details had been aired in court, that confidentiality agreements had been signed, and the quotations attributed to a friend about the parties' reactions to the deal. He maintained, however, that the story had likely been passed to him by either the Newsdesk or the Showbusiness desk, and he accepted that it may have been Ms Lampert who had passed it to him. He also said that he would not have felt any need to verify the story further if it had come from a *Daily Mail* colleague, because the assumption would have been that the necessary checking had already been done.

884. During Mr Kay's evidence, it was suggested that the story may, in reality, have been passed to him by Ms Lampert. However, Ms Lampert did not give article-specific evidence about this Article in her witness statement, and this Article was not put to her in cross-examination. No article-specific allegation that she had procured information for this Article by unlawful means was therefore investigated with her. Nor were the payment records said in the pleading to be proximate to this Article put to Mr Kay as relating to this story.

885. Ms Frost Law said in her witness statement that the Article contained quite specific and private information about her and Mr Law reaching a settlement agreement through a telephone conference and signing confidentiality agreements. She described herself as having been happy with the outcome, although that still meant that she had to work, and said that the Article contained private information about her financial arrangements and feelings. Mr Law said in his witness statement that there was "*no way on earth*" the information in the Article – including the actual settlement, the fact of reaching a settlement, keeping the home, the lump sum, reference to conference calls and confidentiality obligations – would have been shared, and that he did not think he discussed the settlement with anybody other than in communications to and from his lawyers, who may have left messages about it on his phone.

886. Ms Frost Law was cross-examined specifically on this Article. She was shown the same-day *Mirror* report, which included a statement from a spokesman confirming that she and Mr Law had reached an amicable settlement, and it was put to her that the Article in the *Daily Mail* may similarly have been based on information provided by someone in her camp, possibly her solicitor, Raymond Tooth. She rejected that suggestion, saying that she very much doubted that her solicitor would have disclosed the information because she had signed a legal document preventing disclosure and

would have expected a lawyer to be similarly bound. It was also put to her that, if she had thought at the time that the Article had been based on unlawfully obtained information, she would have raised that with Mr Kay when she later encountered him professionally or socially. Her answer was, in substance, that at the time there was no evidence that the information had been obtained unlawfully, that matters were then confused and distressing, and that she only now understood that the information had been unlawfully obtained. In re-examination, Ms Frost said more generally that she had never herself provided the information contained in the Articles she complained of to Associated's journalists and had never encouraged her friends, family or publicist to do so.

(c) The parties' submissions

887. Ms Frost Law submitted that the Article contained highly private and detailed information that was inherently unlikely to have been obtained lawfully. She relied on the private nature of the settlement discussions, the references to telephone conference calls and confidentiality agreements, and the evidence of Ms Frost Law and Mr Law that the information was sensitive and closely held. She also relied on payments to Mr Whittamore/JJ Services, ELI/TDI and System Searches recorded in the *Daily Mail* ledgers in temporal proximity to the Article. In closing, however, the focus of the Claimants' case shifted away from the pleaded payments case. No specific allegation that the relevant information in this Article had been obtained by any identified unlawful act was put to Mr Kay. Instead, there was an attempt, through the cross-examination of Mr Kay, to suggest that the story had in reality come from Ms Lampert and, by implication, from the same source on whom she relied in other Ms Frost Law stories.

888. Associated submitted that the claim in respect of this Article was speculative and unsupported by evidence. It argued that the pleaded case was based solely on proximate payment records, but that there was nothing in the ledgers to connect any of those payments to Ms Frost Law, to this Article or to Mr Kay. It submitted that none of those payments was put to Mr Kay and that the Article had instead been approached in cross-examination on an entirely different and unpleaded basis, namely that it may have come from Ms Lampert and possibly from her source chain. Associated submitted that this was not a case that had been pleaded or properly put; that no clear allegation of UIG was made against Mr Kay at all; and that it was not open to the Claimants to use closing submissions to transform an unparticularised insinuation into a finding that someone else – whether Ms Lampert or Ms Feinstein – had engaged in voicemail interception or other unlawful conduct in relation to this Article.

(d) Discussion and conclusion

889. I accept that the Article contained private information. It included information about the parties' financial settlement, the process by which it was said to have been reached, and the parties' respective attitudes to it. I also accept that this was information that Ms Frost Law and Mr Law regarded as closely held and sensitive. But, as with the previous Articles, that does not without more prove that the information was obtained by unlawful means. The burden remains on the Claimant to prove the unlawful mechanism alleged. In my judgment, that burden is not discharged in relation to this Article.

890. First, the payments relied upon do not provide the missing link. The pleaded case in relation to this Article was, in substance, a TPI/payment case. Specifically, the Claimant relied on four requests to ELI, on 1 July 2005, and on a wider cluster of payments to ELI, JJ Services and System Searches within a short period of the Article. But there is nothing in those ledgers to connect the payments to Ms Frost Law, to this Article, or to Mr Kay. Temporal proximity alone is not enough. There is no evidential bridge between the existence of those payments and the sourcing of the material in this Article. The difficulty is particularly acute here because none of the payments relied upon was put to Mr Kay in cross-examination.

891. Second, Mr Kay's evidence does not support any inference of UIG. His account was that the story was likely passed to him by either the News desk or the Showbusiness desk, possibly Ms Lampert, in written form, already researched and, on his account, verified elsewhere on the paper, and then adapted into Diary style. That was not inherently improbable. It is also of some significance that a story on the same subject appeared in the *Mirror* on the same day. I do not treat that as proving an authorised leak or lawful source, but it does provide some support for Mr Kay's evidence that this was a story circulating at the time and not uniquely the product of covert acquisition by him (or anyone else). The fact that Mr Kay could not now identify exactly how the additional detail came into the Diary piece does not provide a proper basis for inferring UIG.

892. Third, no properly articulated case of UIG was put to Mr Kay in relation to this Article. He was not asked whether he had obtained the information by voicemail interception, by call data, by TPI work or by any other identified means. Nor was he asked whether he knew that any information supplied to him had been unlawfully obtained. The allegation that appeared in the Claimants' Trial Matrix – that ELI had been commissioned by the Showbusiness or News Desk to target Ms Frost Law and carry out voicemail interception and/or other unlawful acts – was not pleaded and was not put to Ms Lampert as a distinct case. The difficulty is therefore not merely that this alternative source-chain theory was not proved, but that it was not the article-specific case pleaded in the Re-Re-Re-Amended Particulars of Claim, which identified the basis of complaint in relation to this Article as the proximate ELI requests and the surrounding pattern of payments. It is not open to the Claimant to advance a different article-specific case now.

893. Fourth, I must deal expressly with the insinuation that emerged in the cross-examination of Mr Kay that the story may in truth have been sourced through Ms Lampert and, through her, by Ms Feinstein. Even if that is how Ms Frost Law sought to advance the case at trial, it was not pleaded in the Re-Re-Re-Amended Particulars of Claim that Ms Feinstein herself engaged in voicemail interception or any other UIG in relation to this Article, nor that Ms Lampert knew that to be so, nor still less that Mr Kay did. That was not a distinct case properly investigated at trial. Ms Feinstein was not a party to these proceedings, was not called as a witness, and has had no opportunity to answer allegations of that kind. As I have already explained (see [61]-[62] above), where allegations are made about individuals who are not parties and whose conduct has not been investigated as part of the issues the Court had to decide, I record the way the parties sought to advance their cases but, unless I expressly state otherwise, I make no findings of fact in relation to such allegations or such individuals. It is therefore not open to the Claimants to obtain findings in relation to alleged wrongdoing by Ms Feinstein in this Article on the basis of closing submissions alone.

894. I also bear in mind the limited extent of Mr Law's evidence on mechanism. He said that the information was so detailed and private that it must have come from communications with his lawyers and may have been contained in messages left on his phone. But that remains an inference on his part. It does not identify any particular unlawful act, any person who carried it out, or any evidential route by which the information reached Mr Kay. It therefore does not supply the missing article-specific proof.

895. Standing back and considering the evidence as a whole, I am not satisfied that this Article was obtained by, or was the product of, UIG carried out or commissioned on Associated's behalf. Ms Frost Law has not proved that the information in the Article was obtained by voicemail interception, itemised call data, or any other unlawful method. It follows that the claim in respect of this Article fails.

(32) "*Will the ex factor force Liz to halt her big day?*": *Mail on Sunday* 24 July 2005 (Katie Nicholl)

896. This is the eleventh Article relied upon by Ms Hurley in her claim.

897. This Article, published in the *Mail on Sunday*, on 24 July 2005, under the headline "*Will the ex factor force Liz to halt her big day?*", was bylined to Katie Nicholl. It reported that Ms Hurley and Mr Nayar were having to postpone their wedding plans because Mr Nayar's estranged wife, Valentina Pedroni, had made a "*U-turn*" over the financial settlement. The Article stated that the couple had been planning to marry in February 2006, that Ms Pedroni had reportedly agreed to a financial settlement in April 2005 but was no longer content with it, and that this meant that Mr Nayar remained married and the wedding could not proceed. The Article also included quotations attributed to a friend, to the effect that Ms Pedroni was making matters as difficult as possible, that the couple had thought matters were "*done and dusted*" but were now back to square one, and that the situation was especially difficult for Ms Hurley, who wanted to settle down with Mr Nayar and have a second child.

898. The information relied upon by Ms Hurley as having been unlawfully obtained includes, in particular, the assertions that the wedding plans had been postponed because of a renewed dispute over Mr Nayar's divorce settlement with Ms Pedroni, the detail that a settlement had previously been accepted and then rejected, and the quotations attributed to a friend concerning the impact of the dispute on Ms Hurley and Mr Nayar.

(a) The issues

899. The issue is whether Ms Hurley has proved, on the balance of probabilities, that the relevant information in this Article was obtained by UIG carried out or commissioned on Associated's behalf. The fact that the Article contained private and sensitive information about relationship and marital matters does not of itself establish the unlawful means by which that information was obtained. The question is whether Ms Hurley has proved the unlawful mechanism alleged.

(b) The evidence

900. Ms Hurley said, in her witness statement, that she and Mr Nayar had many conversations about Ms Pedroni, and that Ms Pedroni made it as difficult as possible

for them to be together and to get married. She said that she wanted to be married by the time she turned forty, and that she and Mr Nayar would have speculated between themselves about when they could marry, but that nothing had been booked because of what was happening with Ms Pedroni. She said that she could not think of anyone who would have known about marriage plans between them, because there were no fixed plans at that time. She said that she did not want to get involved in the financial wranglings of the divorce settlement, that Mr Nayar never asked her to do so, and that any discussions about that would have been private between them. She said that she had always thought there were leaks from Ms Pedroni's side, because Ms Pedroni was angry about her relationship with Mr Nayar, and that she felt sorry that Mr Nayar was having to have this episode played out in public. Ms Hurley was not cross-examined on this Article.

901. Ms Nicholl said in her witness statement that she did not specifically recall who was the source for the information that Ms Hurley had postponed her wedding because of a delay in Mr Nayar's divorce settlement with his first wife. She said that, when first considering the matter, she thought the information most likely would have come from one of her confidential Hurley sources. Having looked at her notebooks, however, she said that one notebook entry referred to a source described as EH11-B, whom she initially thought could have provided the story because this was the kind of information that source would have given her and because she was speaking to that source very regularly about Ms Hurley. Another notebook entry referred to "EH11-A", whom she identified as Veronica Blake. Ms Nicholl said that Ms Blake was a freelancer who had good confidential sources close to Hugh Grant and Jemima Goldsmith and that her notebook indicated that Ms Blake also had a source who was good friends with Valentina Pedroni and had told her that the divorce had not been finalised.

902. Ms Nicholl also referred to a note mentioning Ms Pedroni's lawyer in Mumbai, and said that she might have tried to speak to her, although she could not remember doing so. Her evidence was that, based on her notebooks, she thought that some of the information came from Veronica Blake and that she likely also spoke to "EH11-B" or another confidential Hurley source about the story. She further said that some information, including that Ms Hurley was planning to marry in February 2006 and that Mr Nayar was divorcing his first wife, had already been publicly reported and likely came from cuttings.

903. As to System Searches, Ms Nicholl said that she understood it was said that Associated had made 16 payments to System Searches within a short period of this Article; she could not recall if she had used a search agency, but if she had done so it would have been to help her obtain telephone numbers or addresses.

904. In cross-examination, Ms Nicholl was taken to the Article and to entries in her notebook. It was put to her that her reference to EH11-B as a possible source for the material was speculative, because there was nothing connecting the two parts of the notebook page. Ms Nicholl accepted that, at this distance, she was seeking to reconstruct the likely source from her notebook and from who she was speaking to at the time. She maintained, however, that she could be sure that she had been speaking at the time to a contact who was close to Ms Pedroni. It was also put to her that there were detailed quotations in the Article which were not found in her notebook. Her answer was that this was "*not uncommon*".

905. She was further asked about the 16 proximate payments to System Searches. She maintained that, if System Searches had been used, it would have been to obtain telephone numbers or addresses in order to put the story to those concerned. Finally, it was put to her that the quoted material in the Article had been obtained through voicemail interception. She denied that unequivocally.

906. Mr Dillon dealt with this Article briefly in his witness statement as one of several Diary stories by Ms Nicholl. He said that he had no specific memory of the Article or whether he was involved in sourcing it. He added, more generally, that he was usually not involved in articles in the Diary, which was a separate section, and that Ms Nicholl worked more closely with Paul Field than with him, although he did oversee some of her stories.

(c) The parties' submissions

907. Ms Hurley submitted that the information in the Article was private and restricted, and that her evidence about the sensitive and private nature of the underlying discussions stood unchallenged because she was not cross-examined on this Article. She relied on the detail of the information in the Article, on the absence of any satisfactory article-specific explanation for the quoted material, and on the 16 payments to System Searches within a short period of the Article. In closing, the Claimants also advanced the contention that the quotations in the Article had been obtained through voicemail interception.

908. Associated submitted that the claim in respect of this Article was not made out. It relied on Ms Nicholl's evidence that she had genuine sources for Ms Hurley stories and that, in relation to this Article, her best reconstruction from her notebooks was that some of the information came from Veronica Blake, who had a source close to Ms Pedroni, and that she likely also spoke to EH11-B or another confidential Hurley source. It submitted that some of the background information was consistent with material available from press cuttings.

909. As to the 16 payments to System Searches, Associated submitted that there was no evidential link between those payments and this Article. It further submitted that the allegation of voicemail interception made in cross-examination was unpleaded, unsupported by evidence, and should not have been advanced.

(d) Discussion and conclusion

910. I accept that the Article contained private information. It concerned the state of Mr Nayar's divorce negotiations, the effect of those matters on wedding plans, and the impact of the situation on Ms Hurley. I also accept that Ms Hurley regarded these matters as private and sensitive, and that her evidence to that effect was not challenged in cross-examination. But, as with the other Articles, that does not without more establish that the information was obtained by unlawful means. The burden remains on the Claimant to prove the unlawful mechanism alleged. In my judgment, that burden is not discharged in relation to this Article.

911. First, I take into account Ms Hurley's evidence that she and Mr Nayar discussed these matters privately and that she could think of no one who would have known of marriage plans between them. That evidence is relevant to the private nature of the information.

It does not, however, prove the unlawful means by which the information was obtained. Indeed, Ms Hurley herself said that she had always thought there were leaks on Ms Pedroni's side, because Ms Pedroni was angry and because the situation was unfolding in public. I do not treat that as proving a lawful source. But it is consistent with the existence of human sources on or around Ms Pedroni's side of the story, and it therefore tends against an inference that unlawful methods must have been used.

912. Second, the payments relied upon do not provide the missing link. Ms Hurley relied on 16 payments to System Searches within a short period of this Article. But there is no evidence linking those payments to the information in this Article, to any particular enquiry relevant to it, or to any unlawful act that generated the material that was published. Ms Nicholl's evidence was that, if she used System Searches, it would have been to obtain telephone numbers or addresses. Even if that evidence is treated with appropriate caution given the lapse of time and the reconstructive nature of parts of her account, the central difficulty remains: the payments themselves do not connect to this Article in any article-specific way. Temporal proximity alone is not enough.

913. Third, I accept Ms Nicholl's evidence that, to the best of her recollection and reconstruction from her notebooks, the information in the Article likely came from ordinary journalistic sources. Her account was not that she could now identify with certainty a single source for every element of the story. Rather, she said that the material likely came from a combination of sources she was speaking to at the time, including Veronica Blake, who had access to someone close to Ms Pedroni, and possibly EH11-B or another confidential Hurley source, together with background material from press cuttings. At this distance, that is unsurprising. It is not possible now to trace every part of the Article back to a single source or note. But the inability to do so does not justify an inference of UIG. I accept Ms Nicholl's evidence that her best recollection is that at least some of the information came from the source chain she identified, and I do not consider that there is any evidential basis for rejecting that account and replacing it with an inference of UIG.

914. Fourth, no proper basis was established for the allegation of voicemail interception. That allegation was unpleaded and was put to Ms Nicholl in cross-examination on the footing that the quotations in the Article did not appear in her notebook and therefore must have been obtained unlawfully. That is insufficient. The fact that a notebook entry does not record every quotation or every detail subsequently appearing in a published article does not, without more, justify an inference that the missing material came from voicemail interception. No article-specific evidence was identified to support such an allegation. Nor was any coherent route established by which intercepted voicemail material was said to have reached Ms Nicholl. In those circumstances, the allegation was unsupported and should not have been made.

915. Standing back and considering the evidence as a whole, I am not satisfied that this Article was obtained by, or was the product of, UIG carried out or commissioned on Associated's behalf. Ms Hurley has not proved that the information in the Article was obtained through voicemail interception, through System Searches acting unlawfully, or by any other unlawful method. It follows that the claim in respect of this Article fails.

(33) *"Elton cops an extra bill for wedding"*: *Daily Mail* 16 December 2005 (Nicole Lampert)

916. This is the third Article relied upon by Sir Elton and Mr Furnish in their claim.

917. This Article, published in the *Daily Mail*, on 16 December 2005, concerned security arrangements for Sir Elton John's and Mr David Furnish's forthcoming civil partnership ceremony in Windsor on 21 December 2005. It stated that Sir Elton would have to pay an additional sum of around £10,000 for policing the event; that barriers would be erected and police patrols would protect the couple and their guests from expected crowds; that up to 20 officers would be involved; and it included a quotation from a police spokesman that any extra policing costs would be met by the organisers, together with a quotation from Sir Elton's spokesman saying that he was happy to pay and did not want to inconvenience anybody. The Article also gave some further detail about the ceremony and the party to follow, including that it was to be an intimate ceremony at the Guildhall in Windsor followed by a larger celebration at the couple's nearby home, and that several celebrities were expected to attend.

(a) The issue

918. The issue is whether Sir Elton John and Mr Furnish have proved that the relevant information in this Article, in particular the statement that the policing would cost around £10,000 and the reference to up to 20 officers, was obtained by UIG.

(b) The evidence

919. Mr Furnish's evidence is that he and Sir Elton exchanged vows, on 21 December 2005, the first day on which same-sex civil partnerships could legally take place; that they had many conversations with Windsor police because their principal concern was security; and that they had not put out a press release or invited publicity. He said that the only reason the event became public knowledge at all was because the banns had to be posted, with the result that the press knew that the ceremony was to take place at the Guildhall. Apart from that, he said, "*everything else about the day*" was kept completely private. He further described the precautions taken to protect privacy, including the use of security guards, barriers and identification procedures for those working at or attending the celebration. He said that the couple followed police recommendations from a security standpoint, that there were multiple conversations with the police about these matters, and that the police suggested putting on extra officers, which they paid for. He added that the amount paid was exactly as reported in the Article. He also said that, at the time, he and Sir Elton assumed that the Article must have resulted from a leak from somewhere or someone close to the operation and planning. Mr Furnish was not cross-examined on this Article.

920. Care is, however, required in identifying the precise extent of Mr Furnish's evidence. His statement establishes that there were multiple conversations with the police about security arrangements, that the amount ultimately paid was as stated in the Article, and that the Claimants were trying to keep the occasion, so far as possible, private. But his evidence does not go so far as to say that every detail in the Article, including in particular the reference to "*up to 20 officers*", was known only to an extremely limited circle or could not have been disclosed by an intermediary involved in the arrangements. Nor does it exclude the possibility that some of the information reported may have come from Sir Elton's spokesman, Gary Farrow, or another intermediary involved in the arrangements.

921. Ms Lampert said that she did not remember writing the Article. She noted that it appeared on a news page, but not as a lead, which suggested to her that it would not

have been an exclusive or a story into which much work had been put. Having reviewed it, she said that the fact of the civil partnership, the Windsor location, and the general point that the local council and police were making plans to manage expected crowds would have come from other reporting. She recalled that there were many stories at the time about the wedding and that she had not broken stories on it. She thought PA copy would have been one source and that she may also have looked at the *Evening Standard*. She said she was not sure whether the cost of security came from PA copy or other reporting. She further said that she could see from the Article that a police spokesman had provided a quotation, though she could not remember who she spoke to or what further background might have been given, and that the £10,000 figure may have been a "*guesstimate*" of likely cost given the number of police officers involved. She also said that she could see from the Article that she had spoken to Sir Elton's spokesman for reaction and assumed that this would have been Gary Farrow, whom she described as someone who would sometimes speak to her if she wanted to check a story on Sir Elton and would sometimes give her stories on him.

922. Ms Lampert also addressed the allegation that there were multiple payments to ELI, JJ Services and System Searches in proximity to the Article. She denied using any TPI assistance for this story; said that she had never heard of or instructed JJ Services/Steve Whittamore; and said that, in any event, payments to ELI would typically be made weeks after publication rather than before, so that the suggested timing did not fit this Article.

923. In cross-examination, Ms Lampert was taken to the Article and to PA reporting. She accepted that the PA copy contained some of the general information later used in the Article, including the fact of the ceremony at the Guildhall, the expected crowds, the use of barriers and police patrols, and the police quotation about the organisers paying any extra policing costs. She also accepted that the PA reporting did not mention either the £10,000 figure or the reference to up to 20 officers, and that the PA report said that, for operational reasons, police would not say how many officers would be needed.

924. When pressed about the precision of the £10,000 figure, particularly in light of Mr Furnish's evidence that this was exactly what was paid, Ms Lampert said that this made her think that it may have come from Gary Farrow, Sir Elton's spokesman, and she said that he often gave unauthorised information. She added that it could have been from Gary Farrow, or from another cutting she could no longer identify, or from a process of deduction. She was explicit that, after so many years, this was all speculation because she could not really remember writing the Article. She denied that ELI had been used on her behalf to blag the police or the local authority into revealing the cost of policing or the number of officers. She also rejected the suggestion that such a course would have formed part of any regular *modus operandi* in relation to this story.

925. There is some substance in the criticism that Ms Lampert's account shifted under cross-examination. In her witness statement, she suggested that the figure may have been a "*guesstimate*"; in oral evidence, she also raised the possibility that Mr Farrow may have supplied it. But I do not regard that shift as indicative of dishonesty. Ms Lampert was candid from the outset that she had no real recollection of writing the Article. Cross-examination led her into considering what may have been the most likely route by which she had obtained a figure that turned out to be accurate. That was not

the elaboration of a remembered account; it was the reconstructive evidence of a witness trying, at a considerable remove in time, to assist. I accept that process for what it was.

(c) The parties' submissions

926. The Claimants submit that the Article contained private and specific information about the security arrangements for the civil partnership and the cost of policing it which is not explained by lawful sourcing. They rely on Mr Furnish's evidence that, apart from the fact of the ceremony itself becoming public through the banns, the Claimants sought to keep the event private; on the precision of the £10,000 figure, particularly given Mr Furnish's evidence that this was exactly what was paid; and on the fact that neither the PA material nor the identified press cuttings contained either the £10,000 figure or the reference to up to 20 officers. They further emphasise that the police had said they would not release officer numbers for operational reasons. Against that background, they submit that Ms Lampert's evidence was speculative, that her reliance in oral evidence on Gary Farrow was a late and implausible reconstruction, and that the proper inference is that ELI had been used to blag either the police or the local authority for the cost and officer numbers.

927. Associated submit that the Article was lawfully sourced. They rely on Ms Lampert's evidence that this was a widely reported event, that part of the Article plainly came from PA copy and other media reporting, that the Article itself quoted both a police spokesman and Sir Elton's spokesman, and that Gary Farrow was a realistic source of off-the-record guidance or background. They submit that the Claimants' case has no article-specific evidential foundation beyond unmoored payment records and a propensity case. They further submit that there is nothing linking any of the proximate payments to this Article, to Ms Lampert, or to any alleged blagging of Thames Valley Police or the local authority, and that the supposed police/local authority blagging theory is inherently implausible.

(d) Discussion and conclusion

928. I accept that this Article contained information which the Claimants would not have wanted in the public domain, concerning as it did the security arrangements for their civil partnership ceremony and the cost to be borne by them for extra policing. I also accept that, subject to what necessarily had to become public through the banns and the fact of the Guildhall ceremony, the Claimants were trying to preserve as much privacy as they could around the event. But those matters do not, without more, establish that the information was obtained by unlawful means.

929. First, the pleaded reliance on proximate payments to ELI, JJ Services and System Searches does not provide the missing link. There is no evidence connecting those payments to this Article, to any particular enquiry relating to Windsor policing, or to Ms Lampert. The problem is acute in relation to the suggestion that a third party was commissioned to blag Thames Valley Police or the local authority. There is no article-specific document, invoice, note or witness evidence connecting any such act to this Article. What remains is temporal proximity and a generalised propensity argument. That is insufficient. I therefore reject the Claimants' specific contention that ELI was commissioned to blag the police or the local authority. There is no direct evidential foundation for it, and it is in any event inherently unlikely. Blagging a police force, or a local authority closely involved in the planning of a high-profile event of this

sort, would have carried a degree of risk. The evidence does not justify the inference that such a course was undertaken here.

930. Second, the state of the evidence is such that it is not possible to reach a firm conclusion as to precisely how Ms Lampert obtained the £10,000 figure or the reference to up to 20 officers. But the inability now to identify the precise route does not assist the Claimants unless the evidence justifies a positive inference that UIG occurred. I do not consider that it does. The Article itself was plainly built in part on public reporting and official comment. Some of the detail may have been added by deduction. It is also a realistic possibility that some information came from Gary Farrow, Sir Elton's spokesman, or another intermediary involved in the arrangements. Mr Furnish's evidence does not exclude that possibility. Indeed, his own evidence was that, at the time, he assumed that the Article must have resulted from a leak from somewhere close to the operation and planning.

931. Third, although Ms Lampert's evidence shifted under cross-examination, I do not regard that as supporting an inference of wrongdoing. She was candid that she had little or no actual recollection of the Article and was reconstructing possibilities when pressed. There is substance in the point that her oral evidence developed beyond her witness statement. But I accept that this was the product of the cross-examination process and the passage of time, rather than any indication that she was not telling the truth.

932. Drawing the evidence together, I am not satisfied that the Claimants have proved that the information in this Article was obtained by UIG. Lawful explanations remain realistically open on the evidence, including a combination of public reporting, deduction, official or semi-official background, and information from Sir Elton's spokesman or another intermediary involved in the arrangements. In those circumstances, the Claimants have not made good their case in respect of this Article.

(34) *"I'm mad about Harry"*: *Daily Mail* 2 January 2006 (Rebecca English)

933. This is the seventh Article relied upon by Prince Harry in his claim.

934. This Article, published in the *Daily Mail*, on 2 January 2006, and bylined to Rebecca English, concerned Prince Harry's relationship with Chelsy Davy. It reported that Chelsy Davy had said to a close friend that she was "*madly in love*" with Prince Harry but feared that their relationship was doomed because of the distance between them and the practical consequences of his future Army service. It also referred to her concern that he might be "*tainted*" by publicity concerning her father's links with Robert Mugabe. The Article went on to describe the couple's New Year holiday together on Bazaruto Island in Mozambique, including the assertion that Prince Harry had flown in on Mr Davy's private jet, a gift of a silver bracelet for Chelsy, details of meals and socialising at the resort, and further detail about the accommodation in which the couple were staying.

(a) The issue

935. The issue is whether Prince Harry has proved that the information in this Article, in particular the details of his and Ms Davy's feelings, their holiday together, and the gift referred to in the Article, was obtained by UIG.

(b) The evidence

936. Prince Harry's evidence was that the Article revealed information about his relationship with Chelsy Davy, including "*our feelings and the present I bought*". He said that the information in the Article, particularly about his feelings, the fact that they were on holiday together, and the present he gave Chelsy, was very private and would only have been known to a very tight circle, if not just the two of them. He added that the material in the Article concerning Robert Mugabe and Ms Davy's supposed fears that he might be tainted by her father's relationship with Mugabe was speculation and was simply untrue. Prince Harry was not cross-examined about this Article.

937. Prince Harry's evidence therefore stands unrebutted so far as concerns the privacy and sensitivity of some of the information reported. But, as with other Articles, that does not of itself establish that the information was obtained by unlawful means.

938. Rebecca English's evidence was that she had re-read the Article and her notebook from November 2004 onwards. She said that Chelsy Davy came from a well-known family in Africa and that she had previously been told by locals in Mozambique that it was common knowledge in the local community that the Davy family holidayed there each Christmas and New Year. She said that Prince Harry's previous trip with the family had been widely covered by the press and that she had herself flown to Mozambique, in 2004, at the request of the News Desk to cover that first trip, making good local contacts at that time. She said that local people and others staying on the island were very chatty about Prince Harry's visit, that she had introduced herself as a journalist, and that people working on the island and tourists alike had been willing to speak to her.

939. Ms English said that, in 2004, she had established a local contact, "DOS7-A", who was a hotelier on the mainland and who knew someone working at the hotel where the Davy family was staying. She said that it was not uncommon for one contact to provide a link to another source, or introduce a journalist to someone who might be able to help. Her evidence was that, in 2006, the information about what happened at the resort came either from a freelance journalist who was in Mozambique at the time and came to the *Daily Mail* with the story based on what had been seen and heard from eye-witness contacts at the resort, including information about gifts exchanged and activities enjoyed by the group, or from the local contacts she had cultivated there the year before, or from some combination of the two.

940. As to the background in the Article about Prince Harry's and Ms Davy's relationship, Ms English said that by this point the fact that they had met in Africa and were conducting a long-distance relationship had been widely reported and that she would have taken that material from cuttings. She said that she did not specifically remember looking at the cuttings she had been shown, but that these were the kinds of papers and cuttings she would generally have checked when writing stories of this sort.

941. As to the references in the Article to Ms Davy's feelings and concerns for the relationship, Ms English said that the Article referred to "*well-placed sources*". She did not remember now who she spoke to for this Article but said that she expected this information would have come from sources in Cape Town or from sources she had developed in the UK who were in Ms Davy's circle. She added that members of Ms Davy's family would also, on occasion, confirm matters if asked. Her evidence was

that they did not proactively ring her up with information, but that if she called to check a point, they were often willing to confirm or deny it and might on occasion give some further detail.

942. Ms English also addressed the allegation that payments had been made by Associated to ELI/TDI, JJ Services and System Searches around the time this Article was published. Her evidence was that she had never heard of, used, or asked anyone else to use ELI/TDI or JJ Services. She said that she did not use System Searches in relation to this Article and, in any event, would not have asked the Scotts for anything other than a name or address from what she understood to be public records. Her evidence was that she did not need anyone to look up UK-based names or addresses for this story because there was no British connection to it, and that the information in the story came from a local freelance as well as local sources she had already established the year before.

943. In cross-examination, the original pleaded case based on payments to TPIs was not turned into any article-specific challenge that could link those payments to this story. Instead, a different allegation was put to Ms English, namely that she knew perfectly well that ELI were being used by her desk to obtain information through voicemail interception. The allegation was put to Ms English in the following exchange:

> Q: "You see, if we go to [the Ledger entries] we see a number of payments to ELI around the time of this article. I suggest to you that you knew perfectly well that ELI were being used by your desk to obtain information from the use of voicemail interception?"
>
> A: "I don't know how many times I can state this, but I have never heard of these companies, I have never used them. And I would also point out, at the time, in terms of size, the *Daily Mail* was an even bigger paper than it is today. They published hundreds of stories a day, thousands of stories a week. And you are randomly plucking figures, you know, towards this company out of thin air and desperately trying to see if they try to fit my story. I cannot state it any more clearly: I have never heard of these people".

(c) The parties' submissions

944. The Claimants submit that the Article contained private information about Prince Harry's and Ms Davy's relationship, including their feelings and details of the gift he gave her, and that the nature of the information supports an inference of UIG. Their original pleaded case relied on payments to TPIs, particularly ELI, around the time of the Article. At trial, that case shifted to the unpleaded allegation that Ms English knowingly received information that was the product of voicemail interception.

945. Associated submit that the original case based on payments to TPIs fails because those payments cannot be linked specifically to this Article. They rely on Ms English's evidence that the Article was sourced from a combination of local eye-witness or hospitality contacts in Mozambique, a local freelance journalist, sources in Ms Davy's circle, and background material available from cuttings. They further submit that the voicemail interception allegation advanced in cross-examination was unpleaded, unsupported by evidence, and should not have been made.

(d) Discussion and conclusion

946. I am not satisfied that Prince Harry has proved UIG in relation to this Article.

947. First, Prince Harry's evidence that certain aspects of the Article were private, and that some of the material about Ms Davy's supposed fears concerning her father and Robert Mugabe was speculative and untrue, does not advance the claim far enough. I accept that some of the information in the Article was of a kind that Prince Harry would not have wanted in the public domain. I also accept that the Mugabe-related material was, on his evidence, simply speculation. But neither proposition establishes unlawful sourcing. In particular, the existence of speculation and embellishment in a newspaper article does not, without more, permit an inference that the underlying information must have been gathered unlawfully.

948. Second, the originally pleaded case based on payments to TPI providers, particularly ELI, does not succeed. Even assuming there were payments to ELI around the time of publication, there is no evidence linking any such payment to this Article or to any particular piece of information in it. What is missing is any article-specific evidential bridge. Temporal proximity alone is not enough.

949. Third, the alternative case advanced at trial, namely that Ms English knowingly received information that was the product of voicemail interception, was unpleaded and entirely unsupported by evidence. No attempt was made to identify who was said to have carried out the interception, whose voicemail was supposedly targeted, or how any specific information in the Article was said to derive from it. It was, in substance, a serious allegation advanced without particulars and without evidential foundation. I accept Ms English's answer to that allegation in cross-examination (see [943] above). It was a direct and genuine response to a case that was, as put, wholly unparticularised and unsupported by any article-specific material. In those circumstances, it was not an allegation that ought properly to have been advanced.

950. Fourth, Ms English's evidence as to sourcing was coherent and, in the respects material to this Article, plausible. Her evidence was that this was a story with a substantial foreign element, centred on a holiday location in Mozambique to which she had previously travelled and where she had established local contacts. She explained how local resort and hospitality contacts, a freelance journalist on the ground, and sources in Ms Davy's circle could have contributed to the story, while the background relationship material came from cuttings. That is not to say that every detail can now be traced with certainty after the passage of so many years; plainly it cannot. But the inability to reconstruct the precise route by which each element of information reached her does not justify a positive inference of UIG.

951. Drawing the evidence together, Prince Harry has failed to demonstrate, on the balance of probabilities, that UIG occurred in relation to this Article. The original claim based on the use of TPIs has no proved link to this Article. The allegation of voicemail interception advanced at trial was unpleaded and lacked any evidential foundation. Lawful explanations remain realistically open on the evidence, including a combination of cuttings, local eye-witness or hospitality contacts, a local freelance journalist, and sources within Ms Davy's circle. In those circumstances, the claim in respect of this Article fails.

(35)* *"Is Ronnie Barker's family helping hide his runaway son"*: *Daily Mail* 25 February 2006 (Paul Bracchi & Stephen Wright)

952. Like Article (29), this Article is not the subject of any claim by a Claimant. It is relied upon by the Claimants as part of their propensity case against Mr Wright, in support of the contention that he used UIG, in particular through ELI, to obtain private financial information.

953. The Article was published in the *Daily Mail*, on 25 February 2006, and was bylined to Paul Bracchi and Stephen Wright. The material principally relied upon by the Claimants is the passage stating that Adam Barker's bank accounts contained "*substantial sums*"; that the total was understood to be about £60,000; that roughly half was in a savings account and half in a current account; that there had been no withdrawals from the savings account; and that the current account was being used, via standing orders, to pay council tax on the property and other bills.

(a) The issue

954. The issue is whether the Claimants have established, on the balance of probabilities, that the detailed financial information in this Article was obtained through UIG and that the Article therefore provides episode-specific support for their wider propensity case against Mr Wright. The Claimants' case is inferential. It relies on the nature of the information itself and on ledger entries showing payments for "*Barker enquiries*" which they contend relate to ELI.

(b) The evidence

955. In his second witness statement, Mr Bracchi addressed the allegation directly. He said that he remembered the story well because it was the first story on which he worked with Mr Wright. He said that he had been working on the piece during the week and that, late in the week, Mr Wright provided him with the information about Adam Barker's bank accounts which appeared in the Article, including that there was about £60,000 in the accounts, split roughly in half between a savings account and a current account, and that no withdrawals had been made from the savings account whereas standing orders were coming out of the current account. He said that he did not think he asked Mr Wright where the information came from, but assumed it had come from one of Mr Wright's police sources.

956. In cross-examination, Mr Bracchi accepted that the passages in the Article dealing with the bank accounts were written by him, but he maintained that the information had been provided to him by Mr Wright. He also said that he had never heard of ELI at the time and was unaware of the payments later shown to him in relation to "*Barker enquiries*".

957. Mr Wright also gave evidence about the Article. He accepted that he was very familiar with the story, having broken the earlier story, in September 2004, that Adam Barker was on the run, and he said that the source for the financial material in the Article was an "*impeccable*" source who had the right to provide that type of information and whom he described as a confidential source within the police. He rejected the proposition that it was untrue that the police would have provided such detailed information in relation to the bank accounts, and he also rejected the suggestion that the relevant material was the product of ELI.

958. In relation to the ledger entries, Mr Wright accepted that the entries in the ledger, described as "*Barker enquiries*", had a high probability of relating to him, but he said that he could not remember what those payments related to. He denied that they showed that he had used ELI to obtain unlawful financial information, and maintained that the information in the Article came from his police source.

(c) The parties' submissions

959. The Claimants submit that the passage in the Article concerning Adam Barker's accounts contains a series of very specific details that are inherently unlikely to have been volunteered by a legitimate police source. They rely on the fact that there are ledger entries for "*Barker enquiries*" shortly before publication, and submit that these are to be inferred to relate to the Article. They also rely on Mr Bracchi's evidence that the information came to him from Mr Wright, and that Mr Bracchi himself had never heard of ELI, as supporting the inference that any relevant use of ELI was concealed from colleagues.

960. Associated submits that the Claimants' case is speculative. It relies on Mr Wright's evidence that the information came from an officer with oversight of the case, and on Mr Bracchi's evidence that he himself did not use ELI or any UIG in connection with the Article. In its written closing submissions, Associated submits that it was not put to Mr Bracchi that he used ELI or any form of UIG in connection with the Article, and that Mr Wright explained that the details about the circumstances of Adam Barker's departure and the relevant financial material were shared with him by an officer who had oversight of the case. Associated submits that neither this Article nor Article (29) evidences a propensity on the part of Mr Wright to commission UIG.

(d) Discussion and conclusion

961. I accept Mr Wright's evidence in relation to this Article. The financial material in the Article was undoubtedly specific, but the question is whether the Claimants have established that it was more likely than not obtained through UIG. In my judgment, they have not done so. Mr Bracchi's evidence was clear: the information was provided to him by Mr Wright, and he assumed, because of Mr Wright's role as a senior crime reporter, that it had come from one of his police sources. That is consistent with Mr Wright's own account.

962. The existence of the "*Barker enquiries*" ledger entries does not, in my judgment, bridge the evidential gap. Mr Wright accepted that they probably related to him, but he could not say what they concerned. There is no episode-specific evidence showing that those entries resulted in the acquisition of the particular banking information that appears in the Article. The Claimants' case therefore depends on an inference that, because there were ELI entries and because the information was private and detailed, the information must have come from UIG. I do not consider that inference justified on the evidence.

963. Standing back, I find it more likely than not that the financial information in the Article came from Mr Wright's police source(s), and not from any form of UIG. It follows that this Article does not support the Claimants' propensity case against Mr Wright.

(36) The Miskiw/Anderson Emails: April 2006

964. This incident did not give rise to any published article. It is, however, relied upon by both Sir Simon Hughes and Ms Frost Law as an instance in which Associated, acting through Chris Anderson of the *Mail on Sunday*, received information which, it is alleged, was known to be the product of voicemail interception executed by Glenn Mulcaire. Sir Simon Hughes relies on the email exchanges concerning him as a free-standing unlawful intrusion claim. Ms Frost Law relies on the related email exchange concerning her former nanny, Jade Schmidt, as a distinct unlawful episode in her claim.

965. Mark Anderson (known professionally as "Chris" Anderson) is a journalist and former senior editor at the *Mail on Sunday*. He was Associate Editor for News and Sport, from November 1999 to November 2008. Greg Miskiw was formerly a senior journalist/executive at the News of the World. By April 2006, he was no longer employed there and was operating as a freelance journalist. Glenn Mulcaire was a private investigator who was involved in the interception of voicemails in connection with the *News of the World* and who, in November 2006, pleaded guilty to conspiracy to intercept communications. He was sentenced to 6 months' imprisonment in January 2007.

966. The pleaded case of Sir Simon Hughes is that Greg Miskiw provided Chris Anderson with unlawfully obtained information concerning Sir Simon Hughes and his boyfriend (anonymised as "HJK"), and that Chris Anderson knew that the information came from Glenn Mulcaire and was the product of voicemail interception.

967. The pleaded case of Sadie Frost Law is advanced by reference to the same general allegation: that Greg Miskiw sent to Chris Anderson material concerning Ms Frost Law and her nanny, Jade Schmidt, which was derived from voicemail interception, and that Mr Anderson knew this, encouraged further use of the information, and acted upon it.

(a) The issue

968. The issue is whether each Claimant has shown that there was UIG for which Associated was responsible. In the way the case was advanced at trial, that turns on whether Chris Anderson knew that the information being sent to him by Greg Miskiw was the product of voicemail interception.

(b) The evidence: the key emails

969. The key contemporaneous documents are the so-called Miskiw/Anderson emails.

970. In relation to Sir Simon Hughes, the chain begins with an email from Greg Miskiw to Chris Anderson on 19 April 2006: "*Hi Chris, Have you made any progress with the Simon Hughes boyfriend?*" Later that day, Mr Anderson replied: "*sorry Greg - just seen your note, we have been trying for a picture, but without success. I shall check on progress and get back to you.*"

971. On 20 April 2006 at 12:20, Mr Miskiw sent a further email in the same chain: "*Hi Chris, It's just that my source is putting pressure on me. Also, are you interested in Sadie Frost? I might have a story about her*". At 12:50 the same day, Mr Anderson replied:

"*Quite understand, Greg, and I'm really sorry about the lack of progress. We are there again today but the place is deserted - there is a LibDem sticker in the window though - and we are going to have to pull off at lunchtime. It looks for all the world as if our happy couple are on holiday. Of course we are interested in Sadie.*"

972. Later, on 20 April 2006, at 16:55, Mr Miskiw sent Mr Anderson an email headed "*sadie*" which stated:

> "This is a bit sketchy but there is definitely a story here.
>
> Jade is full time nanny to Sadie Frost and Jude Law's kids. She has been sacked and is serving a months notice period at the moment. Sadie says 'the job is changing, I don't really need a full time nanny, I don't want a live-in nanny.' Later she talks about giving Jade a month's notice.
>
> Clearly there is a dispute between the two because Sadie says she has received a letter from Jade which she says she finds 'quite offencive.' (sic) And Sadie goes on to say 'obviously there has been a huge communication problem with you and me.' Sadie also owes Jade money. She said to Jade 'I know you are in financial difficulties ..... you actually put me in a position just before my divorce and asked me for the money, but you'll get the money, you'll get it'.
>
> It appears Jade has also been in touch with a child psychologist called Amanda Owen on [telephone number given]. I am not quite sure what that is all about. Perhaps it's about Sadie's kids. I don't think Jade has any.
>
> I know a paper is sniffing around Jade so I put in a call to her on her mobile. I left a msg saying I might be able to help her handle any publicity that results from stories that appear in newspapers.
>
> Within 30 minutes her lawyer rang me back in a panic asking when a story was going to be used. I told her it was inevitable that it would get out as Sadie's side leaked like a sieve. I said I would be happy to help handle press enquiries. She said she would get in touch if the story got out because she had no experience of handling the press.
>
> You might say of me 'poacher turned gamekeeper' and you could be right. If a story were to appear I could play a role in trying to get Jade on board with the MoS. If you are interested email me. I have to leave my office in 30 minutes so I won't have access to my emails or call me on the mobile [number given] if you are interested and I can give you Jade mobile number".

973. On 21 April 2006, at 16:12, Mr Miskiw sent a further email to Mr Anderson providing addresses for Jade Schmidt and Sadie Frost, and a telephone number which Mr Miskiw said could be for either Ms Schmidt or Ms Frost. Later that day, at 17:53, Mr Anderson replied: "*thanks greg - we're going to give her a knock*".

974. On 25 April 2006, at 10:05, Mr Miskiw asked: "*Hi Chris, How's it going with Jade and Simon Hughes?*" On the same day, at 11:15, he sent a further email referring to HJK and stating: "*[HJK] … is answering the phone in his flat*".

975. On 26 April 2006, at 17:33, Mr Miskiw emailed Mr Anderson:

> "Hi Chris
>
> Things are hotting up on the Sadie Frost front.
>
> Jade Schmidt has got only one more week of her notice period to work. It would be useful to get a few pars in the paper even if it just in the diary. Along the lines of Sadie's trouble with nannies etc etc ..... I would flush Jude out, hopefully in my direction, therefore ultimately in yours".

976. At 18:01, Mr Anderson replied: "*okay Greg - shall try, many thanks*". At 18:18, Mr Anderson sent a further email: "*by the way, Jade has said through friends that she doesn't want to talk ...*"

977. On 27 April 2006, Greg Miskiw sent a further email stating: "*Ok. I am afraid the Simon Hughes story has gone elsewhere. It was no longer in my hands. Sorry*".

978. On 2 May 2006, Greg Miskiw wrote again: "*Morning Chris, I clearly there is no interest in the Sadie Frost nanny being sacked. I would like to take the story back pls. You did say you would stick me through for £500 for Simon Hughes and Sadie*". There is a record of payment of £500 to Mr Miskiw.

(c) The evidence: witnesses

979. Mr Anderson provided a witness statement, dated 17 October 2025, and gave oral evidence at trial. He was, at the material time, Associate Editor for News and Sport at the *Mail on Sunday*. In his witness statement he denied any knowing involvement in unlawful interception and denied that Greg Miskiw ever discussed Glenn Mulcaire with him, or discussed unlawful or illegal services that Mulcaire could offer. He said that he had never heard of Mulcaire until much later media reporting, and that if Mr Miskiw had ever said that information had been obtained by unlawful means he would have broken off contact and ensured that he was not used. He described his contact with Mr Miskiw as sporadic and denied any close or collaborative relationship.

980. In relation to the April/May 2006 email chain with Mr Miskiw, Mr Anderson said that, given the passage of time, his recollection was limited and had to be refreshed from the documents. As to the Sir Simon Hughes/HJK tip, he said that Mr Miskiw would, he thought, have called him out of the blue and then followed up by email. He accepted that the emails show that a photographer had been sent to try to obtain a picture, but said that he could not now recall the detail of the prospective story or how the *Mail on Sunday* obtained HJK's address. His evidence was that, given the nature of his role, he would not ordinarily have involved himself in those details. He said that, when Mr Miskiw referred in one email to "*my source*", that would not, at the time, have struck him as suspicious or unusual, because the use of confidential journalistic sources was commonplace.

981. As to the email of 25 April 2006 stating that HJK was "*answering the phone in his flat*", Mr Anderson said in his witness statement that it appeared to him, both now and as he believed it would have appeared to him then, that Mr Miskiw had simply taken it upon himself to dial the landline in order to establish, for the benefit of the picture desk, that HJK was at the address. He denied that Mr Miskiw told him that the information came from Mr Mulcaire or had been obtained by unlawful means. In cross-examination,

that proposition was put squarely to him and he rejected it in clear terms, saying that he had never heard of Mulcaire at the relevant time and that the email reference to a "*source*" would have seemed entirely ordinary in journalistic terms.

982. In relation to the Sadie Frost Law/Jade Schmidt emails, Mr Anderson accepted that they show that he responded "*Of course we are interested in Sadie*", later said "*thanks greg – we're going to give her a knock*", and later reported that "*Jade has said through friends that she doesn't want to talk…*". In his witness statement, he said that he thought he would have read Mr Miskiw's 20 April 2006 email on his BlackBerry during the morning news conference and would probably have passed the tip on to the news desk, without giving it any detailed thought. He said that he would have regarded it as one of many routine tips that might or might not yield a story. He accepted that Mr Miskiw later provided an address and number for Ms Schmidt, but said that he had not asked for this information and had no reason to think it had been obtained improperly.

983. A material feature of Mr Anderson's oral evidence was his insistence that the 20 April 2006 email did not, at the time, convey to him that he was being sent the product of voicemail interception. He accepted in cross-examination that the email contained direct quotations, but rejected the proposition that this would then have made voicemail interception obvious. His evidence was that this was an exercise in "*20:20 hindsight*"; that, at the time, phone hacking was not something that would have occurred to him; and that direct quotations could have come from a range of sources. He also said that, so far as the email had editorial value, it was not because the quoted material itself was publishable, but because it suggested that a nanny was leaving Ms Frost Law's employment and might therefore be approached to see whether she was willing to speak.

984. Mr Anderson also addressed the £500 payment reflected in the contemporaneous records. He said in his witness statement that he did not recall offering that sum and thought it unlikely that he would have done so, but he assumed that he must have agreed to some fee, because Mr Miskiw was, as he put it, "*down on his luck*" and it was easier to agree than to argue about it. He denied that any such payment reflected knowing payment for unlawfully obtained information.

985. The hearsay evidence relied upon from Greg Miskiw is contained in an affidavit, dated 20 August 2019. It was not made in these proceedings, and its contents were not tested in cross-examination. Mr Miskiw is now dead. In the affidavit, Mr Miskiw said that, until Mr Mulcaire's arrest in August 2006, he used him for his "*full range of services*". He described several ways in which Mr Mulcaire's work could be used, including the "*recycling*" of leads and work commissioned through the "*Dark Arts*". As to the *Mail on Sunday*, he said that Chris Anderson was his main contact there, though he also knew Katie Nicholl. He further stated that all of the contacts he listed, including those at the *Mail on Sunday*, knew that he sourced stories through the "*dark arts*", by which he meant unlawful means including blagging and voicemail interception, whether or not they knew of Mr Mulcaire's specific role. He also said that, when he became freelance, he more frequently called Mr Anderson with tips, later recognising those stories in Ms Nicholl's column and then seeking payment.

986. The substance of that allegation – namely that Mr Anderson knew that Mr Miskiw was sourcing stories through unlawful means and, in effect, acting as a conduit for material obtained by Mr Mulcaire – was put to Mr Anderson in cross-examination. He denied it.

He denied that Mr Miskiw had told him that he was using Mr Mulcaire, denied that there had been any discussion of unlawful methods or "*dark arts*", and denied that he knowingly received the product of voicemail interception. It is, however, relevant to note that the cross-examination did not descend to every detail of Mr Miskiw's affidavit or to each target there identified. The affidavit therefore remained untested hearsay, albeit hearsay whose essential allegation against Mr Anderson was directly put in cross-examination.

987. The hearsay relied upon from Glenn Mulcaire is in a different form. It is not contained in any witness statement, affidavit or signed document made by him, but in statements attributed to him in Byline Investigates articles. In the first article, he is said to have stated, among other things, that they were "*working for a lot of papers*" and that Greg Miskiw told him that the information was for the Mail on Sunday. In the second, he is quoted as saying that the reason "*Mail on Sunday*" was written on the relevant note was that this was "*the destination of the hacked data*", and that his assistant transcribed tape recordings of voicemails. In the third, as summarised in Appendix 2 (see [A2.570]), he is said to have described the Sir Simon Hughes operation as beginning as a "*fishing expedition*" by Mr Miskiw to identify any boyfriend, and to have said that he started hacking for Mr Miskiw, who would sell the product to the *Mail on Sunday* among other papers, that some of the material was newly hacked for the *Mail on Sunday*, and that he identified and located Sir Simon Hughes' boyfriend "*exclusively*" for that newspaper.

988. I have dealt, in Appendix 2, with the proper treatment and weight of the hearsay evidence of Mr Miskiw and Mr Mulcaire (see [A2.563]-[A2.570]). For present purposes, the important point is that the Claimants rely upon that hearsay, together with the contemporaneous emails, as supporting the inference that the information being supplied to Mr Anderson was the product of voicemail interception and that he knew this. Mr Anderson's evidence was to the opposite effect.

989. A further matter explored in the evidence concerns a telephone call between Mr Anderson and Graham Johnson, in or about June 2016. The existence and subject-matter of the call are evidenced principally by two documents: (i) a memorandum made by Mr Johnson dated 15 June 2016; and (ii) an email from Mr Anderson to Liz Hartley dated 29 December 2018.

990. In his memorandum, Mr Johnson recorded that he had a telephone conversation of about 15 minutes with Mr Anderson, during which he referred to emails between Mr Anderson and Greg Miskiw said to link Mr Anderson to knowledge of phone hacking. The memorandum records that Mr Anderson acknowledged knowing Mr Miskiw and having bought stories from him, but denied knowing that those stories were obtained through phone hacking and said that he did not know how Mr Miskiw sourced them. It also records that Mr Johnson indicated that, if Mr Anderson cooperated, steps might be taken to assist him and that he might not need to be named in any public forum.

991. In his later email to Ms Hartley, Mr Anderson gave a materially different emphasis to the same conversation. He said that Mr Johnson had approached him about emails allegedly linking him to material obtained by phone hacking, had refused to say who he was working for, and had sought a meeting. According to Mr Anderson, Mr Johnson said that he had authority to guarantee that, if Mr Anderson cooperated with enquiries into the *Mail* group, the emails would be "*kept private*". Mr Anderson described the

unmistakable implication of the conversation as being that publication of the emails would be embarrassing for him, and said that he regarded the proposal as, in substance, a threat that the material would be published if he did not cooperate.

992. In cross-examination, Mr Anderson maintained that he had not been told at the time of the 2006 emails that the material was obtained by phone hacking, and that the later approach by Mr Johnson did not alter that position.

993. The matter was also explored in the evidence of Mr Johnson. He accepted that he had contacted Mr Anderson and had indicated that, if he cooperated, he might not be named publicly, but rejected the suggestion that this amounted to blackmail or a threat, maintaining that it was an offer consistent with journalistic practice to protect a source who chose to assist an investigation.

(d) The parties' submissions

994. The Claimants submit that, read in context, the Miskiw/Anderson Emails are compelling evidence that Associated, through Mr Anderson, received and used information that was the product of UIG by Mr Mulcaire, and that Mr Anderson knew this. They rely on the emails themselves, the surrounding documentary material, and the hearsay evidence of Greg Miskiw and Glenn Mulcaire. They submit that the issue falls to be approached inferentially, bearing in mind the covert nature of the underlying conduct and the incomplete documentary record.

995. In relation to Sir Simon Hughes, the Claimants submit that Mr Anderson was plainly Mr Miskiw's point of contact at the *Mail on Sunday* for the proposed story about Sir Simon Hughes and HJK. They rely on the fact that the emails presuppose prior contact; that Mr Anderson updated Mr Miskiw on attempts to obtain a photograph; and that his continuing engagement makes it implausible that he did not understand the nature and provenance of the information he was receiving.

996. In relation to Ms Frost Law, the Claimants submit that the email of 20 April 2006 is, on its face, plainly in the nature of a transcript or partial transcript of voicemail messages. They rely in particular on the direct quotations attributed to Ms Frost Law, the detailed account of the dispute with Jade Schmidt, the following emails in which Mr Anderson confirmed interest, received further contact details and acted upon them, and the later exchanges showing continued engagement with the story. They also rely on the request for, and payment of, £500 as supporting the inference that the information was sensitive and risky to obtain, and that Mr Anderson knew this.

997. Associated submits that the Court's focus should remain on the only material contemporaneous documents, namely the 2006 emails and the related payment record, and on the pleaded issue of actual knowledge. It submits that the emails show no more than unsolicited tips passed to Mr Anderson, likely relayed by him to the picture desk or news desk, followed by limited attempts to stand up the stories and no published article. It emphasises that the emails contain no reference to Mr Mulcaire, no reference to any unlawful method and no indication that Mr Anderson was told that the information had been unlawfully obtained.

998. As to Ms Frost Law's claim, Associated submit that the April 2006 emails should not be read with hindsight informed by what is now known of Mr Mulcaire's activities.

They rely on Mr Anderson's evidence that the material would, at the time, have been treated as a lead suggesting that Jade Schmidt, as a departing nanny, might be approached to see whether she wished to speak, rather than as publishable material in itself; that direct quotations could have come from a range of sources; and that the reference to "*my source*" was, in journalistic terms, entirely unexceptional. They also submit that the later exchanges ("*we're going to give her a knock*"; "*Jade has said through friends that she doesn't want to talk*") are consistent with ordinary attempts to stand up a tip and do not support an inference of knowing participation in UIG.

999. Associated further submits that the hearsay evidence of Mr Miskiw and Mr Mulcaire does not materially advance the question of Mr Anderson's contemporaneous knowledge. As to Mr Miskiw, it submits that his affidavit does not say that he told Mr Anderson how the information concerning HJK or Ms Frost Law had been obtained, and that its broad assertions about "*dark arts*" are inconsistent, unsupported by contemporaneous documents and of limited weight. As to Mr Mulcaire, they submit that the Byline articles are not signed statements by him, but journalistic reports of statements attributed to him, and in any event do not establish that Mr Anderson knew at the time that the material he received was unlawfully obtained.

1000. The Claimants did not, in either their written or oral closing submissions, advance any substantive case based upon the 2016 call from Mr Johnson to Mr Anderson. Their case on the Miskiw/Anderson episode remained focused on the contemporaneous 2006 emails, their contents, and what they conveyed to Mr Anderson at the time.

1001. By contrast, Associated addressed the 2016 call in its written closing submissions. It submitted that Mr Anderson's reaction to the approach by Mr Johnson – including his description of the call as threatening or improper – was consistent with his evidence that he had not knowingly received the product of UIG and supported his credibility as a witness.

1002. The oral closings did not materially enlarge the parties' written positions on this issue, save that Associated submitted that the Claimants had effectively narrowed their case on Mr Anderson's knowledge to what, on their case, was conveyed by the emails themselves.

(e) Discussion and conclusion

1003. The critical issue is a narrow one. The Claimants' case, as ultimately advanced at trial, was not simply that the information contained in the Miskiw/Anderson emails can now be seen as consistent with voicemail interception. It was that, in April 2006, Chris Anderson *knew* that what Greg Miskiw was sending him was the product of voicemail interception (and, in substance, of Glenn Mulcaire's unlawful activities). That issue must be determined by reference to the contemporaneous position in April 2006, not through the prism of what became known later about Mr Mulcaire's methods and activities.

1004. I have no hesitation in accepting Mr Anderson's evidence on that issue. My assessment of him is that he was a truthful witness. He was at times discursive and inclined to argue with counsel, but those features did not cause me to doubt his honesty. In my judgment, they reflected a witness who was plainly distressed by, and resistant to, serious allegations based on inferences drawn from documents and untested hearsay.

1005. I accept that the contemporaneous emails show that Mr Anderson responded to, and to a degree engaged with, Mr Miskiw's approaches. But the nature and extent of that engagement must not be overstated. I accept Mr Anderson's evidence that these were, to him at the time, passing "*tips*" from a freelance journalist: of some interest, but not matters of real substance in the context of his day-to-day role. That conclusion is consistent with what happened. No article was published. The Sir Simon Hughes story "*went elsewhere*". The Sadie Frost/Jade Schmidt material came to nothing. Mr Miskiw himself asked to "*take the story back*".

1006. In relation to Sir Simon Hughes, I do not accept the Claimants' submission that the email exchanges establish that Mr Anderson knew the information came from Mr Mulcaire or was the product of unlawful methods. The contemporaneous emails say nothing about Mr Mulcaire. On the contrary, the relevant reference is to Mr Miskiw's "*source*". I accept Mr Anderson's evidence that, at the time, that was an ordinary journalistic concept and did not, in itself, suggest anything suspicious. I also accept his evidence that, whatever may now be inferred from later-acquired knowledge, the email stating that HJK was "*answering the phone in his flat*" would not, at the time, have conveyed to him that any pretext call or other unlawful method had been used.

1007. In relation to Ms Frost Law, I accept that the 20 April 2006 email can now be read, with the benefit of later knowledge and against the background of the Mulcaire material, as highly consistent with voicemail-derived information. It contains direct quotations and highly personal detail. But that is not the question I have to decide. The question is whether Mr Anderson appreciated that at the time. I accept his evidence that he did not. I accept his account that he read or scanned the material as a tip, and that its editorial significance, such as it was, lay in the possibility that Jade Schmidt might be approached and might speak, rather than in the quoted material itself as publishable copy.

1008. The Claimants' case depends, in large part, on hindsight. What is now known of Mr Mulcaire's methods and of the wider phone-hacking scandal undoubtedly casts the emails in a different light. But it is not legitimate to reason backwards from later revelations and then attribute that knowledge to Mr Anderson in April 2006. At that date, the arrests of Mr Mulcaire and Mr Goodman had not yet occurred. There is no contemporaneous reference in the emails to phone hacking, voicemail interception, blagging, "*dark arts*", or to Mr Mulcaire himself. In my judgment, the Claimants' analysis invites the Court to read the emails through the lens of later knowledge rather than by reference to what they would reasonably have conveyed to this recipient at the time. I reject that approach.

1009. I have also considered carefully the hearsay evidence of Greg Miskiw and Glenn Mulcaire. As to Mr Miskiw, I bear fully in mind that his affidavit contains the broad assertion that his contacts at the *Mail on Sunday*, including Mr Anderson, knew that he sourced stories through the "*dark arts*". But the affidavit is hearsay, not made in these proceedings and untested in cross-examination. More importantly, it does not say that Mr Miskiw told Mr Anderson that the Hughes or Frost/Schmidt material he was sending him was derived from voicemail interception, or otherwise identified its provenance to him. That omission is important. As to Mr Mulcaire, the material relied upon is weaker still: it consists not of any signed statement or affidavit by him, but of what journalists reported he had said in Byline articles. I do not regard that material, whether taken alone or together with Mr Miskiw's affidavit, as capable of displacing the tested oral evidence of Mr Anderson on the issue of his contemporaneous knowledge.

1010. I prefer Mr Anderson's evidence that, had Mr Miskiw told him that the information had been obtained unlawfully or through Mr Mulcaire, he would not have accepted it. That proposition was put directly in cross-examination and his answer was clear: "*He hadn't told me. If he had told me, I wouldn't have touched [it]*…". Later, he added that he "*wouldn't have gone anywhere near this*" and described such a course as "*horrible*" and "*intrinsically unacceptable*". I accept that evidence. It is consistent with the straightforward and emphatic denial he gave throughout that he knew of Mr Mulcaire's involvement or of any unlawful method.

1011. The £500 payment does not alter that conclusion. I accept that this is a contemporaneous fact of some significance, and I have taken it into account. But it does not prove knowing participation in UIG. I accept Mr Anderson's evidence that he does not now recall the precise circumstances in which the figure was agreed, and that his best explanation is that Mr Miskiw, who was by then down on his luck, pressed for payment for two speculative tips that had gone nowhere. The payment is not, in my judgment, a sufficient basis on which to infer the knowledge alleged by the Claimants.

1012. The 2016 call from Mr Johnson to Mr Anderson was explored in evidence but was not ultimately relied upon by the Claimants as part of their case on liability. Mr Johnson's contemporaneous record of the call records Mr Anderson as denying that he knew what was being supplied by Mr Miskiw was the product of voicemail interception. That is consistent with the evidence he gave at trial, which I accept. The call was relied on by Associated as part of its submissions on Mr Anderson's credibility, but it does not form part of the core evidential basis on which the Claimants' case in relation to the Miskiw/Anderson emails falls to be determined.

1013. Drawing these matters together, I find that the Claimants have not proved that, when Mr Anderson received and responded to the Miskiw/Anderson Emails in April 2006, he knew that the information in question was the product of voicemail interception or other UIG. That finding is fatal to the liability case advanced by both Sir Simon Hughes and Ms Frost Law in relation to this incident. Whether some or all of the information may, in fact, have originated from voicemail interception is not the question that determines Associated's liability on the case that was pleaded and pursued at trial. On that case, the necessary element of knowing receipt and use by Mr Anderson is not made out.

1014. It follows that the claims of Sir Simon Hughes and Ms Frost Law, insofar as they are based on the Miskiw/Anderson Emails, are dismissed.

(37)* "*Heather, An Early Morning Phone Call…and the Other Man in her Life*": *Mail on Sunday* 18 June 2006 (Elizabeth Sanderson)

1015. This Article is not relied upon, directly, by any Claimant as a claim for UIG, but is relied upon as part of the Claimants' propensity case against the journalist, Elizabeth Sanderson.

1016. The Article reported that, at 6.30am on a Sunday morning, Nicola Taylor received a telephone call from Heather Mills, who wished to assure her that there had been no affair with her ex-husband, Ben Noakes. The Article suggested that the call had unsettled Ms Taylor and had caused her to look again at the time spent between Mr Noakes and Ms Mills. It presented Mr Noakes as a longstanding and loyal friend of

Ms Mills, tracing their friendship back to the mid-1990s when Ms Taylor's production company had screened Ms Mills for a presenting role and when Mr Noakes had assisted her professionally. The Article further referred to the self-help book, *Life Balance*, on which Ms Mills and Mr Noakes worked together, described their friendship as having strengthened after the breakdown of Mr Noakes' marriage, and included commentary from unnamed friends about the nature of that friendship and the contrasting backgrounds of Mr Noakes and Ms Mills. The overall thrust of the piece was not that an affair had occurred, but that Mr Noakes had remained one of Ms Mills' closest and most loyal supporters during the breakdown of her marriage to Sir Paul McCartney.

1017. As part of their "*generic*" case of UIG, the Claimants originally alleged that, in May 2006, Glenn Mulcaire was hacking the phone of Ben Noakes. It was alleged that, as a result of this "*hacking*", Mr Mulcaire had discovered that Heather Mills had called Mr Noakes' wife, Nicky Taylor, in the early hours of the morning. The Claimants alleged that this "*hacked*" information was then published in the Article.

1018. In relation to this Article, Baroness Sanderson's evidence was that she could not now recall whether she had personally interviewed Nicola Taylor, but maintained that the Article was written following Features enquiries (via Sian James) and denied any knowledge of phone hacking.

1019. In cross-examination, the Claimants did not put to Baroness Sanderson that she had used the product of voicemail interception as the basis for the Article. Instead, the questioning focused on how Ms Taylor had been located and contacted. Baroness Sanderson said that her recollection was that the story had come from Sian James and that it was likely that Ms Taylor had been reached through one of Ms James' contacts, possibly a television contact. Mr Sherborne then put to her that Sian James must have found Ms Taylor through information supplied by Greg Miskiw. Baroness Sanderson did not accept that suggestion, saying instead that she thought it entirely feasible that Ms James had put her in touch with Ms Taylor through a contact and that, as Ms Taylor herself said she was willing to speak, the resulting piece was, in truth, "*not really a story*".

1020. Ms Taylor's evidence ([A2.551]-[A2.553]) was that she provided the "*early morning phone call*" information to the *Mail on Sunday* in a paid telephone interview, and that the journalist (who she thought may have been Baroness Sanderson) did not know of it before she disclosed it.

1021. Ms Taylor's evidence, which was not challenged by the Claimants, disposes of the allegation of voicemail interception originally advanced by the Claimants. I can find no reference to this incident or Article in the Claimants' written closing submissions. The Claimants therefore appear to have abandoned any allegation that Baroness Sanderson was the recipient (knowingly or otherwise) of the product of Mr Mulcaire's alleged voicemail interception of Mr Noakes, or the suggestion advanced in cross-examination that Mr Miskiw "*must have*" supplied the contact information for Ms Taylor. The incident provides no support for any case of "*propensity*" against Baroness Sanderson.

(38) *"Let Her Rest in Peace"*: *Daily Mail* 15 July 2006 (Rebecca English)

1022. This is the eighth Article relied upon by Prince Harry in his claim.

1023. This Article, published in the *Daily Mail*, on 15 July 2006, and written by Rebecca English, reported the reaction of Prince William and Prince Harry to the publication, in an Italian magazine, of a photograph of their dying mother, Princess Diana.

1024. The information said in the Particulars of Claim to have been obtained by unlawful means is "*information relating to the Claimant and Prince William's statement regarding the images of their dying mother including as to private communications and legal matters*". The pleaded case relies on payments to Steve Whittamore/JJ Services and System Searches said to have been made within a proximate period to the publication of the Article.

(a) The issues

1025. The issue is whether Prince Harry has proved, on the balance of probabilities, that the information published in the Article was obtained by UIG attributable to Associated. In the way the case was pleaded, that turns on whether there is any sufficient evidential link between the TPI payments relied upon and this particular Article. At trial, however, an additional allegation of voicemail interception was put to Ms English. That allegation had not formed part of the pleaded case. An issue to be resolved is, therefore, whether there is any proper evidential basis for it in any event.

(b) The evidence

1026. The Article itself reported on the reaction of Prince William and Prince Harry to the publication in an Italian magazine of a photograph of their dying mother, Princess Diana. It referred to the joint statement issued by the princes, quoted its terms, and added background including that the idea of issuing the statement was that of the princes alone; that they had the support of their father, Prince Charles; and that Prince William telephoned Prince Harry to discuss what they should do. It further stated, by reference to "*a source close to them*", that this was "*a highly emotional call for both of the boys*", and reported that the princes had not seen the photographs in question and were not considering legal action.

1027. In his witness statement, Prince Harry relied on the Article as revealing private information about communications between him and his brother concerning photographs of their dying mother. His evidence was that he and his brother "*were having private conversations about photographs of our dead mother which had been put into the public domain*" and that the amount of detail in the Article "*would not have come from Clarence House*". He was not cross-examined on this specific Article.

1028. In her witness statement, Ms English stated that the sourcing of the story was straightforward. She said that the joint statement issued by Prince Harry and Prince William was a major global news story and that, following the issue of that statement, she spoke to a Palace press officer about the background to the decision to issue it. Her evidence was that the press officer told her that Prince William had taken charge, telephoned Prince Harry, that the brothers were of the same mind on the issue, that it

had been a highly emotional call for both of them, that they had the support of their father, and that they were not considering legal action.

1029. That account was maintained in Ms English's oral evidence. In cross-examination, it was suggested to Ms English that it was inherently unlikely that a Palace press officer would have provided the sort of sensitive detail included in the Article and that she was using the phrase "*a source close to them*" to obscure the true means by which the information had been obtained. Ms English rejected that suggestion. Her evidence was that she had a good relationship with the press office; that she was given the information as background guidance; and that the information came from the press office itself. She maintained that this was what had happened.

1030. The documentary evidence linking the Article to TPI activity is limited to the fact of payments within a similar timeframe. There is no documentary evidence identifying the subject-matter of the relevant JJ Services or System Searches enquiries, no evidence directing them to Prince Harry, Prince William, or any relevant associate, and no evidence linking them to Ms English.

1031. At trial, the Claimants additionally put a case to Ms English that the information may have been derived from voicemail interception. It was alleged that journalists other than Ms English had commissioned Mr Whittamore to obtain call data and ex-directory telephone numbers for Prince Harry or his associates and that those journalists, or a private investigator, then obtained the information in the Article by voicemail interception and passed it to Ms English. It was not, however, put to Ms English that she herself knew that the information had been unlawfully obtained in that way.

(c) The parties' submissions

1032. Prince Harry submits that the Article contains highly sensitive private information about emotional and confidential communications between the brothers, concerning photographs of their dying mother. In written closing, the Claimants submitted that Ms English's explanation for the sourcing of the Article was implausible. They argued that it was inherently unlikely that a Palace press officer would, after the princes had already issued the public statement they wished to issue, provide to one journalist alone sensitive details about an emotional and private telephone call between them, together with the additional fact that they had not seen the photographs in question. They further submitted that describing the source as "*a source close to them*" obscured the true position if the source was really a Palace press officer.

1033. Prince Harry also submitted that, given his unchallenged evidence and what they characterised as the propensity of Ms English and others on the *Daily Mail* News Desk to commission UIG, the more likely inference was that the contemporaneous payments to JJ Services formed part of the News Desk's *modus operandi* by which information was obtained and shared around those to whom it would be useful. That, in substance, was the route by which the Claimants sought to connect the Article to UIG.

1034. Associated submitted that the claim in respect of this Article was speculative and unsupported by evidence. It emphasised that the pleaded case relied only on proximate payments to Mr Whittamore and System Searches; that there was nothing to link those payments to this Article beyond loose proximity in date; and that no unlawful act was identified until an attempt was made in cross-examination to suggest some form of

voicemail interception. Associated submitted that this attempt to formulate an unlawful act at trial was unsupported and should be rejected.

1035. Associated further submitted that Ms English's evidence on sourcing should be accepted. It relied on her account that the joint statement from the princes was itself a major global news story; that she spoke to a Palace press officer about the background to the decision to issue the statement; and that the press officer provided the information appearing in the Article.

1036. Finally, Associated submitted that the allegation that the information was obtained by voicemail interception was unpleaded, unsupported by evidence and exceptionally weak. In its written closing submissions, it described the Claimants' case as being that journalists had obtained ex-directory numbers, and that unnamed colleagues or freelancers then used those numbers to obtain the information in the Article through voicemail interception. Associated submitted that this allegation was serious, lacked any evidential basis, and should be rejected.

(d) Discussion and conclusion

1037. I do not accept that Prince Harry has proved UIG in relation to this Article. The pleaded case is thin. It identifies no specific unlawful act and relies, in substance, on no more than date proximity between the publication of the Article and certain payments to JJ Services and System Searches. There is no evidence identifying the subject-matter of those enquiries, no evidence linking them to Prince Harry or to the private information published in the Article, and no evidence linking them to Ms English. Temporal proximity alone is insufficient to establish the necessary connection.

1038. I accept Ms English's evidence regarding the sourcing of the Article. The publication, in Italy, of a photograph of the dying Princess Diana was, obviously, a major international news story. It is entirely plausible that, after the issue of the princes' public statement, a Palace press officer provided further background to a Royal Correspondent on a non-attributable or background basis. I do not regard that as inherently improbable. Nor do I accept the Claimants' submission that the use of the phrase "*a source close to them*" materially undermines the account. It is consistent with an unattributed briefing from a source in or close to the press office.

1039. The attempt, at trial, to advance a case of voicemail interception or phone hacking in relation to this Article must, in my judgment, be rejected. It was not pleaded. The pleaded case was that there were proximate payments to Mr Whittamore/JJ Services and System Searches. The allegation that unnamed journalists or others then used ex-directory numbers or call data to obtain the information in the Article by voicemail interception was a different and much more serious case. It was unsupported by evidence and, as a matter of fairness, should not have been advanced in the form it was.

1040. More fundamentally, there was no evidence capable of supporting such an allegation. There is no document identifying voicemail material, no call data linking this Article to any relevant telephone number, no evidence that any relevant voicemail was intercepted, and no basis upon which it could properly be inferred that the information about the emotional call between the brothers must have been obtained by unlawful means rather than from a source. That allegation is based upon only suspicion and

speculation. There is no proper evidential basis upon which to draw an inference of UIG.

1041. Drawing these matters together, I find that Prince Harry has failed to establish any sufficient evidential link between the TPI payments relied upon and this Article. I accept Ms English's evidence as to the source of the story. I reject the unpleaded and unsupported allegation of voicemail interception or phone hacking. The claim in respect of this Article therefore fails.

(39) *"Harry and Chelsy's love at crossroads"*: *Mail on Sunday* 17 September 2006 (Katie Nicholl)

1042. This is the ninth Article relied upon by Prince Harry in his claim.

1043. This article, published in the *Mail on Sunday*, on 17 September 2006, and written by Katie Nicholl, reported on Prince Harry's relationship with Chelsy Davy. It stated, among other things, that the couple had been having "*serious heart-to-hearts*" about their future; that Chelsy had decided not to move to the UK on finishing her degree; that Prince Harry wished her to live in London; that there were uncertainties about his hoped-for deployment to Afghanistan; and that Chelsy's parents had asked a friend to look out for a property in central London for her and her brother, but that Chelsy had said that she did not want to move to the UK.

1044. Prince Harry's pleaded case in relation to this article relied upon payments to System Searches said to have been made by Associated within a relatively short period of the Article. The inference advanced was that those payments reflected UIG which led to, or materially contributed to, the publication of the article.

(a) The issues

1045. The issue is whether Prince Harry has proved, on the balance of probabilities, that the information published in the Article was obtained by UIG attributable to Associated. In the way the case was pleaded, that turns on whether there is any sufficient evidential link between the TPI payments relied upon and this particular Article. At trial, however, an additional allegation of voicemail interception was put to Ms Nicholl. That allegation had not formed part of the pleaded case. An issue to be resolved is, therefore, whether there is any proper evidential basis for it in any event.

(b) The evidence

1046. In his witness statement, Prince Harry said that this Article was another article about his relationship with Chelsy Davy, including their feelings, and that the information in it was private and was used by Associated to create "*more drama and suspense – as if our relationship was entertainment for their readers*". He said that the reference to the couple spending "*hours on the phone*" was "*very creepy*" and stated his belief that this information came from phone records and from paying close attention to a voicemail from him in order to work out what he and Ms Davy were talking about, unless Associated were listening in on their calls. His evidence in relation to this Article was not challenged in cross-examination.

1047. In her first witness statement, Ms Nicholl dealt specifically with the sourcing of this Article. She stated that, although she did not initially remember specifically who had provided the information, she believed it likely to have come from one or more of the confidential contacts she had for Chelsy Davy. Having refreshed her memory from her notebooks, she said that it enabled her to identify the sources. Her evidence was that one page of her notebook contained information about Chelsy Davy moving to London and her parents searching for a flat for her and her brother, and bore the initials "*RJ*", which she believed referred to a freelance journalist who passed reliable and accurate tips to the *Mail on Sunday*; she also identified another freelancer and a source close to one of Chelsy Davy's closest friends as likely sources for the Article.

1048. Ms Nicholl further stated that she had been introduced to Garth Gibbs, by Paul Field, and that he had a contact who was a friend of Chelsy Davy in South Africa. She said that the information that Chelsy had decided not to move to the UK and had discussed the future with Prince Harry over the telephone, as recorded in her notebook, would likely have come from Mr Gibbs and/or Chelsy's friend in South Africa, who was very close to Ms Davy and regularly gave her reliable and accurate information.

1049. Ms Nicholl also addressed the allegation founded on System Searches. Her evidence was that System Searches, also known as "*the Scotts*", were occasionally used to obtain addresses and telephone numbers, including ex-directory numbers. She said that, whilst she could not say definitively that they were not used in connection with this story, she believed that to be highly unlikely because the sources she spoke to in order to stand up the story would have been in her contacts book, and she would likely also have put the story to the Palace press office, whose number she had.

1050. In cross-examination, Ms Nicholl was asked in general terms about her use of search agents, including System Searches and Steve Whittamore, and she accepted that search agents were sometimes used to obtain telephone numbers and addresses. But the pleaded allegation that payments to System Searches were linked to this Article was not in the end the allegation of UIG that was squarely put to Ms Nicholl at trial. Instead, the cross-examination moved to a different suggested route of UIG. That case had not been pleaded.

(c)The parties' submissions

1051. In their written closing submissions, the Claimants maintained that the Article was the product of UIG. In substance, the Claimants continued to rely on the proximity of payments to System Searches and on the nature of the information in the Article, in particular the references to discussions between Prince Harry and Chelsy Davy about the future of their relationship and her decision not to move to the United Kingdom. They submitted that the sourcing account given by Ms Nicholl should not be accepted and invited the Court to infer that unlawful means had been used.

1052. In its written closing submissions, Associated submitted that Prince Harry's pleaded case failed because there was no evidential basis on which the Court could link any System Searches payment to the obtaining of information for this article. Associated relied on Ms Nicholl's evidence that the story came from her confidential sources connected to Chelsy Davy's social circle and/or from freelancers with access to such sources, as recorded in her notebook evidence and explained in her witness statement. Associated further submitted that the case ultimately advanced in cross-examination

departed from the pleaded allegation, was unpleaded, and lacked any evidential foundation.

(d) Discussion and conclusion

1053. I reject the allegation of UIG in relation to this Article.

1054. First, the pleaded case fails. The pleaded allegation depended upon showing a link between payments to System Searches and the information published in this article. In my judgment, that link cannot be established on the evidence. The fact that payments were made to System Searches at or around the relevant period is not sufficient, without more, to prove that System Searches were used for this story, still less that they were used to obtain information unlawfully for it. There is no documentary or witness evidence tying any identified System Searches request to this Article or to the particular information it contained.

1055. Second, so far as the case advanced at trial went beyond the pleaded System Searches allegation, it was not properly open to the Claimants to supplement that case by an unpleaded allegation of voicemail interception. That was a serious allegation which should have been clearly pleaded and supported by some proper evidential basis before it was put. In the event, it was unsupported by the evidence and I reject it.

1056. Third, I accept Ms Nicholl's evidence as to sourcing. Her account was that she had good contacts in Chelsy Davy's London and Cape Town social circles and also used freelancers who had reliable sources of their own; that, having refreshed her memory from her notebooks, she could identify likely sources for the story; and that the information that Chelsy had decided not to move to the UK and had discussed the future with Prince Harry over the telephone likely came from Garth Gibbs and/or a close friend of Chelsy Davy in South Africa. She also explained why she considered the use of System Searches for this story to be unlikely. I accept that evidence.

1057. Prince Harry's witness evidence concerning this Article was not challenged in cross-examination. I have taken that evidence into account. But the absence of challenge to his account does not bridge the evidential gap in the case on UIG. The burden remained on him to prove the pleaded allegation. On this issue, he has not done so.

1058. Accordingly, I find that Prince Harry has not proved that this Article was obtained by, or was the product of, UIG. The claim in respect of the Article therefore fails.

(40)* "*Heather's 'Bombshell'; Sir Paul's Wife Is Ready to Go Public with a Series of 'Serious Allegations' about the Way He Treated Her*": *Daily Mail* 27 September 2006 (Richard Simpson)

1059. This Article is not the subject of any claim by a Claimant. It is relied upon by the Claimants as part of their propensity case against Mr Simpson, in support of the contention that he used UIG, including through ELI/TDI, in connection with other Articles.

1060. The Article was published in the *Daily Mail*, on 27 September 2006, and was bylined to Richard Simpson. The aspects of the Article relied upon by the Claimants centre on

the allegation that Heather Mills' lawyers were preparing to deploy "*bombshell revelations*" in the divorce proceedings, that her solicitor Anthony Julius had compiled serious claims against Sir Paul McCartney, and on the reference to the so-called "*Maccagate*" tape of a bugged telephone conversation between Sir Paul McCartney and his daughter.

(a) The issue

1061. The issue is whether the Claimants have established, on the balance of probabilities, that the relevant information in this Article was obtained through UIG and that the Article therefore provides episode-specific support for their wider propensity case against Mr Simpson. The Claimants' case is inferential. It relies principally on the nature of the information in the Article and on ledger entries recording a series of payments to ELI on 27 September 2006 bearing the description "*SIMPSON*", which the Claimants contend are to be linked to this Article.

(b) The evidence

1062. In his witness statement, Mr Simpson said that, having reviewed the Article, he remembered its source to be Phil Hall, who in 2006 had taken on the role of Heather Mills' spokesperson. He explained that he had known Mr Hall for years and described him as an old-school PR/spokesperson who would brief trusted journalists fully and frankly, albeit off the record, with quotations then attributed to "*friends*" or "*close sources*". Mr Simpson said that, shortly after he took over running the showbusiness department in September 2006, Mr Hall invited him to lunch; they then spoke further by telephone; and he recorded two consecutive telephone conversations with Mr Hall on his Dictaphone which were specifically about these "*bombshell revelations*". He said that he had subsequently located those recordings in a file on his computer.

1063. Mr Simpson accepted that he had no recollection of the ELI payments, dated 27 September 2006, bearing the description "*SIMPSON*", but he was confident that they did not relate to this Article. His evidence was that he had no need to use ELI on this story because the story "*in its entirety*" was made up from the quotations and information given to him by Phil Hall. He said that there would have been no need to second-source such a story from the subject's own spokesperson, particularly one with whom he had a trusted and established relationship, and that he could have written the piece directly from the recordings.

1064. In cross-examination, Mr Simpson was taken specifically to this Article and to the relevant ledger entries. He was shown the passages in the Article dealing with the alleged "*serious allegations*", the role of Anthony Julius, and the "*Maccagate*" tape. It was put to him that the ELI entries, on 27 September 2006, reflected work commissioned by him for this story; that he had used ELI to "*dig into*" the story and obtain additional "*colour*"; and that he had thereby used ELI to carry out UIG in connection with the Article. Mr Simpson rejected those allegations. He said that the story had been given to him in its entirety by Phil Hall; that there was not a piece of information in the story which had not come from his conversations with Mr Hall, save possibly some additional material from Paul McCartney's publicist; and that the suggestion he was using ELI to dig into the story was "*complete nonsense*" and "*just not true*".

(c) The parties' submissions

1065. The Claimants submit that the Article contains detailed and sensitive information about the stance being taken by Heather Mills in the divorce proceedings, including the existence of serious allegations said to have been compiled by Anthony Julius and the supposed significance of the "*Maccagate*" tape. They rely on the ELI ledger entries, dated 27 September 2006, carrying the description "*SIMPSON*", and submit that these are to be inferred to relate to this Article. They also rely on the way the case was put in cross-examination, namely that Mr Simpson used ELI to dig further into the story and obtain additional information by unlawful means.

1066. Associated's position is that the Claimants' case is speculative and unsupported by episode-specific evidence. The Article was not specifically addressed in Associated's closing submissions. In its written opening submissions, however, Associated submitted, in substance, that this Article did not support a case that Mr Simpson had a propensity to use UIG. More specifically, Mr Simpson's evidence was that the source of the Article was Phil Hall; that he recorded the relevant conversations; and that he had no need to use ELI in relation to the story.

(d) Discussion and conclusion

1067. I accept Mr Simpson's evidence in relation to this Article. In my judgment, it provides a coherent and convincing lawful explanation for the sourcing of the Article. His account is not merely that he had some general recollection of speaking to a spokesperson. Rather, he identified Phil Hall specifically; explained the circumstances in which he was briefed; and said that he had located contemporaneous recordings of two telephone conversations dealing with these very "*bombshell revelations*". That evidence is cogent and directly addresses the inferential case advanced by the Claimants.

1068. I do not consider that the ELI ledger entries, dated 27 September 2006 bearing the description "*SIMPSON*", provide a sufficient basis to infer that the relevant information in this Article was obtained unlawfully. Mr Simpson accepted that he could not now say what those payments related to, but that does not advance the Claimants' case very far. There is no episode-specific evidence showing that ELI supplied the particular information appearing in the Article. The Claimants' case therefore depends on the proposition that, because there were ELI entries on the same date and because the Article contained sensitive material, the information must have come from UIG. In my judgment, that inference is not made good on the evidence.

1069. Nor am I persuaded by the way in which the cross-examination was put. The allegation ultimately advanced was a broad one: that Mr Simpson had used ELI to "*dig into*" the story to obtain additional "*colour*". But no concrete unlawful mechanism was established in relation to this Article, and no specific item of information in the Article was shown to have been obtained by ELI or by any other unlawful means. Against that, there was a direct account from Mr Simpson that the story came from Phil Hall, and I accept that evidence.

1070. Standing back, I find it more likely than not that the information in this Article came from Phil Hall, acting as Heather Mills' spokesperson, and not from any form of UIG.

It follows that this Article does not support the Claimants' propensity case against Mr Simpson.

(41) "*Jemima snubs Liz's big day, but will best man Hugh?*": *Mail on Sunday* 7 January 2007 (Katie Nicholl)

1071. This is the twelfth Article relied upon by Ms Hurley in her claim.

1072. This Article, published in the *Mail on Sunday*, on 7 January 2007, and written by Katie Nicholl, reported that there could be two notable absentees from Elizabeth Hurley's forthcoming wedding to Arun Nayar. It stated, among other things, that Hugh Grant had told Ms Hurley that he might not be able to attend; that this was because his long-term girlfriend, Jemima Khan, had confided to friends that she would "*rather eat her left arm*" than attend; that Jemima Khan and Ms Hurley were "*arch-enemies*"; and that a friend had said there was "*no way*" Jemima Khan would go.

1073. Elizabeth Hurley's pleaded case in relation to this Article was that it contained private information concerning the thoughts and feelings of Jemima Khan and Hugh Grant about attending her wedding, together with information concerning her own views and movements. No specific UIG mechanism was pleaded in relation to this Article. At trial, however, the Claimants advanced an allegation that the information had been obtained by voicemail interception.

(a) The issues

1074. The issue is whether Ms Hurley has proved, on the balance of probabilities, that the information published in the Article was obtained by UIG attributable to Associated.

1075. More specifically, two subsidiary issues arise. First, whether the Court should accept Katie Nicholl's evidence as to the sourcing of the Article, notwithstanding the admitted mistake in her witness evidence concerning a payment to Veronica Blake. Second, whether there is any proper evidential basis for the allegation of voicemail interception that was advanced in cross-examination, notwithstanding that it was unpleaded.

(b) The evidence

1076. In her witness statement, Ms Hurley said that there was definitely tension between herself and Jemima Khan and that friends very close to her would have been aware of the dynamic. She also stated that this was not a subject she talked about openly and that publication of the information made matters worse. She was not cross-examined on her evidence about this Article.

1077. In her first witness statement, Katie Nicholl said that, initially, she thought the information as to whether Jemima Khan would attend Ms Hurley's wedding as Hugh Grant's "*plus one*" almost certainly came from a confidential source, identified as "EH12-B", who was a friend of Hugh Grant and with whom she was speaking regularly at the time. She said that the line that Jemima Khan would "*rather eat her left arm*" than attend was "*very*" EH12-B. In the same statement, however, she went on to say that she had subsequently been shown a payment record indicating that she had paid Veronica Blake in respect of information for this Article, and that it was therefore clear that Veronica Blake had been paid in respect of it.

1078. In cross-examination, Katie Nicholl was shown that the payment record, on which she had relied, did not in fact relate to this Article, but to a different, follow-up story published shortly afterwards. She accepted that point. Her evidence was that she had made a genuine mistake in assuming, from the payment record, that Veronica Blake had been the source for this Article. She said that her initial recollection had been that the source was EH12-B, and that the "*left arm*" quotation was what had reminded her of that source.

1079. Ms Nicholl's evidence in cross-examination was that, once the error in relation to the payment record was identified, she reverted to that initial recollection. She accepted that, years later, she was doing her best to reconstruct the sourcing of the story. She also rejected unequivocally the suggestion, put to her in cross-examination, that the information in the Article had been obtained through voicemail interception.

(c) The parties' submissions

1080. In their written closing submissions, the Claimants submitted, in substance, that Ms Nicholl's account of the sourcing of the Article should not be accepted. They relied, in particular, on the fact that she had wrongly identified Veronica Blake as a source in her witness statement by reference to a payment record which turned out to relate to a different story. They submitted that, once that error was exposed, Ms Nicholl had no reliable basis for identifying a legitimate source, and invited the Court to infer that the information in the Article had in truth been obtained by voicemail interception.

1081. In its written closing submissions, Associated submitted that there was no specific allegation of UIG pleaded in relation to this Article and that the allegation of voicemail interception advanced at trial was unpleaded and unsupported by evidence. Associated relied on Ms Nicholl's evidence that her initial recollection had been that the source was EH12-B, and submitted that her mistaken reliance on the Veronica Blake payment record was an explicable error which did not undermine her essential evidence that the Article came from a human source. Associated further submitted that the allegation of voicemail interception was wholly speculative and should be rejected.

(d) Discussion and conclusion

1082. I reject the allegation of UIG in relation to this Article.

1083. First, I accept the evidence of Katie Nicholl as to sourcing. In my judgment, the mistake she made in relying on the payment record concerning Veronica Blake does not materially undermine her credibility. It is plain that Katie Nicholl was attempting, years later, to reconstruct the sourcing of the Article by reference both to her memory and to the documents shown to her. Her initial recollection was that the source was EH12-B, and that the distinctive "*left arm*" quotation pointed to that source. When the payment record point was shown to be wrong, she accepted the error candidly and explained it as a genuine mistake arising from her misinterpretation of the documents. I regard that explanation as plausible, and I do not consider that the error, once corrected, justifies rejection of her evidence as a whole.

1084. I also reject the allegation of voicemail interception put to Ms Nicholl in cross-examination. It was not pleaded in relation to this Article. It rested essentially on the private nature of the information and on the submission that, because Ms Nicholl

had been mistaken in identifying Veronica Blake as a source, the Court should infer unlawful acquisition. That was not a sufficient evidential basis for so serious an allegation, and I reject it.

1085. Third, I have taken into account Elizabeth Hurley's evidence that there was tension between herself and Jemima Khan, that close friends would have been aware of that, and that this was not a subject she discussed openly. I also bear in mind that her evidence on this Article was not challenged in cross-examination. But that evidence does not establish that the information in the Article was obtained by UIG. The burden remained on the Claimant to prove that allegation. In my judgment, she has not done so.

1086. Taking the evidence as a whole, I am not satisfied that Ms Hurley has proved that the information in this Article was obtained by UIG. On the contrary, I accept Katie Nicholl's evidence that the Article came from a source and that the mistake she made concerning Veronica Blake was an honest error which does not damage her credibility in any material respect.

1087. Accordingly, I find that Ms Hurley has not proved that this Article was obtained by, or was the product of, UIG. The claim in respect of the Article therefore fails.

(42) "*Enter Team Hurley*": *Daily Mail* 3 March 2007 (Richard Price)

1088. This is the thirteenth Article relied upon by Ms Hurley in her claim.

1089. This Article, published in the *Daily Mail*, on 3 March 2007, under the byline of Richard Price, was a feature concerning the arrangements for Ms Hurley's wedding to Arun Nayar. It described, in broad terms, the venue, guests, dress, food and entertainment, and it included references to whether Hugh Grant might attend the wedding.

(a) The issues

1090. The issue is whether Ms Hurley has proved, on the balance of probabilities, that the information published in the Article was obtained by UIG attributable to Associated.

1091. More specifically, the case advanced by Ms Hurley ultimately rested on two matters: first, reliance on payments to System Searches said to be proximate in time to the Article; and, second, a cash book entry, dated 12 March 2007, recording a payment of £4,000 described as a "*special payment to contact for exclusive information and assistance on Hugh Grant/Jemima Khan*". The issue is whether either of those matters provides a sufficient evidential basis for concluding that this Article was the product of UIG.

1092. In the course of cross-examination, a further allegation emerged, namely that some of the information in the Article had been obtained by voicemail interception and then passed to Richard Price. That allegation had not been pleaded. A further issue, therefore, is whether there was any proper evidential basis for it in any event.

(b) The evidence

1093. In her evidence, Ms Hurley said that she and Arun Nayar had tried their hardest to keep their wedding arrangements private and had always assumed that any press reporting about them came from ordinary gossip, a leaky contractor or some inadvertent

indiscretion rather than anything more sinister. Looking back at this Article, while investigating her claim, however, she said that what struck her was the reference to telephone calls involving herself, Mr Nayar and Hugh Grant, asking how the newspaper could have known about those calls. She also said that she wondered how the paper knew about the things she was saying about her weight, her figure and the wedding diet she was on, adding that those remarks sounded exactly like the kind of things she might well have said to David Furnish, Sir Elton John, Arun Nayar, her sister or possibly Donatella Versace. Ms Hurley was not challenged on this evidence.

1094. In his first witness statement, Richard Price said that he remembered writing the Article and that it was "*95% taken from cuttings*". He said that the balance of the material – in particular, the references to Mr Hurley and Mr Nayar having called Hugh Grant to ask him to attend, and to Ms Hurley's dieting in advance of the wedding – came from a conversation with a confidential source who knew them. He stated that he was certain he did not use System Searches in connection with the Article and that such enquiries were not required for what he described as a light showbusiness piece.

1095. In his second witness statement, dealing specifically with the £4,000 cash payment entry, Mr Price said that he did not know who had been paid, did not recognise the document, and did not make, request or arrange the payment. He said that, at the time, he was working as a freelancer and that his standard fee for a spread of this kind was £1,200. He described as preposterous the suggestion that he would have authorised a payment of £4,000 for information for this Article. He added that, although he did not believe his source had been paid at all, if any payment had been made it would have been a small sum and a fraction of his own fee.

1096. In cross-examination, Mr Price maintained that position. He said that he had never seen the £4,000 entry before, did not recognise it, and that it had nothing to do with him. He rejected the suggestion that it related to this Article and said that he found it risible that £4,000 would have been paid for what was, in substance, a cuttings-based feature. He said, in effect, that in this type of showbusiness "*write-through*" the information was largely readily available and that a source would not be paid anything like that level of money for this kind of material.

(c) The parties' submissions

1097. In their written closing submissions, the Claimants maintained that this Article was the product of UIG. They relied on the proximity of payments to System Searches and, in particular, on the £4,000 cash book entry for "*exclusive information and assistance on Hugh Grant/Jemima Khan*". They submitted that the Court should infer that the payment related to this Article, and that the relevant information, especially the passages concerning calls involving Hugh Grant and Ms Hurley and the references to Ms Hurley's dieting, had been obtained unlawfully. During the trial, that case evolved into a suggestion that the information had been obtained by some form of voicemail interception and then passed to Mr Price.

1098. In its written closing submissions, Associated submitted that the case advanced by the Claimants was unsustainable. It pointed out that the £4,000 cash book entry did not identify this Article, Richard Price, or any information concerning Ms Hurley's wedding, but instead referred on its face to "*Hugh Grant/Jemima Khan*". Associated relied on Mr Price's evidence that the Article was essentially a cuttings-based feature

with only limited additional colour from a confidential source, and submitted that there was no evidential basis for connecting either the £4,000 payment or any System Searches entries to this Article. Associated further submitted that the allegation of voicemail interception was unpleaded, emerged only at the end of the cross-examination, and was wholly unparticularised and unsupported by evidence.

(d) Discussion and conclusion

1099. I reject the allegation of UIG in relation to this Article.

1100. First, I accept the evidence of Richard Price. His account that this Article was overwhelmingly assembled from cuttings and other publicly available material, with only limited additional colour from a confidential source who knew the principals, was clear, consistent and inherently plausible for an article of this type. It was, as he described it, essentially a showbusiness "*write-through*" piece.

1101. Second, I am not satisfied that the £4,000 cash book entry is shown to have any connection with this Article. On its face, the entry refers to a payment for "*exclusive information and assistance on Hugh Grant/Jemima Khan*". It does not mention this Article, Richard Price, or Ms Hurley's wedding. There is no documentary or witness evidence linking that payment to this Article. I accept Mr Price's evidence that he did not request, arrange or recognise the payment, and I also accept his rejection of the suggestion that anything like £4,000 would have been paid for information of the kind contained in this Article.

1102. Third, I am likewise not satisfied that the proximate System Searches entries provide any proper basis for concluding that information for this Article was obtained unlawfully. There is nothing tying any identified System Searches request to this Article or to the information it contained. Mr Price was clear in his evidence that he did not use System Searches for this piece, and I accept that evidence.

1103. Fourth, I reject the allegation of voicemail interception that emerged at the end of the cross-examination of Mr Price. It was not pleaded. It was wholly unparticularised. It identified neither the alleged interceptor nor any clear route by which the information was said to have reached Mr Price. Nor was there any proper evidential foundation for the proposition that the relevant information had been left in voicemail messages in the first place. It was, in short, a serious allegation advanced without pleading, particulars or evidential support. It should not have been made and I reject it.

1104. Taking the evidence as a whole, I am not satisfied that Ms Hurley has proved that this Article was obtained by, or was the product of, UIG. The claim in respect of the Article therefore fails.

1105. I should add one further matter. The only specific allegation of UIG put to Mr Price in cross-examination in connection with this Article was that the £4,000 payment was "*for information unlawfully obtained*". I have rejected that allegation on the facts, accepting Mr Price's evidence. It is therefore unnecessary to consider whether Mr Price had, as the Claimants sought to suggest, any propensity to engage in UIG. Nor is it necessary to determine the issues raised by the Article "*What's making Kylie smiley?*", published in the *Daily Mail* on 4 February 2006 and bylined to Mr Price.

Since, however, Mr Price was cross-examined about that Article, I record, in fairness to him, that I am not persuaded that it involved any UIG for which he was responsible.

(43) *"Princes and Palace clash on 'all-night' Diana party"*: *Mail on Sunday* 20 May 2007 (Katie Nicholl)

1106. This is the fourth Article relied upon by Sir Elton and Mr Furnish in their claim and the tenth Article relied upon by Prince Harry in his claim. I shall refer to them, in this section of the judgment dealing with this Article, as the Claimants.

1107. The Article, published in the *Mail on Sunday*, on 20 May 2007, was written by Katie Nicholl. It reported that there were tensions within the Royal Household over an exclusive all-night party that Prince William and Prince Harry intended to host after the memorial concert for Diana, Princess of Wales. It stated, among other things, that the Princes hoped headliners including Sir Elton John, Rod Stewart and Lily Allen would attend; that senior aides considered the party an inappropriate tribute; that the event was being overseen by Mark Dyer; and that Johnny Roxburgh and Michael Fawcett had been brought in to help organise it. The Article also included a separate item about Prince Harry going to a pub with Chelsy Davy and friends after the news that he would not be posted to Iraq.

(a) The issues

1108. The issue is whether the Claimants have proved, on the balance of probabilities, that the information published in the Article was obtained by UIG attributable to Associated.

1109. No specific allegation of UIG was pleaded in relation to this Article. The further issue that emerged at trial was whether there was any proper evidential basis for the unpleaded allegation, put in cross-examination to Ms Nicholl, that information in the Article had been obtained by voicemail interception.

(b) The evidence

1110. In his witness statement, Prince Harry said that the Article contained information about details of a party being planned by him and Prince William after the memorial concert for their mother, including details of his plans and conversations. He said that the information was private, "*nosey and unnecessary*", and that it would most likely have come from one of their phones. Specifically, as to the prospect of Sir Elton John attending the party, he said that he believed it was likely that voicemails had been exchanged about that possibility. His evidence on this Article was not challenged in cross-examination.

1111. In his witness statement, David Furnish said that the Article related to the concert marking the tenth anniversary of Princess Diana's death. He said that Sir Elton would not normally go to a party, but that this was an obvious exception. Sir Elton, he said, absolutely adored Prince Harry, and if there had been talk of a party after the concert and if Prince Harry had invited him, he would have wanted to show his face and support him. Mr Furnish said that there might therefore have been discussions along the lines of having a party after the concert, and that Sir Elton would likely have responded positively, but that such discussions would have been behind-the-scenes and directly

between Prince Harry and Sir Elton John, and private between them. His evidence on this Article was likewise not challenged in cross-examination.

1112. In her first witness statement, Katie Nicholl said that she did not remember well this brief story. Having refreshed her memory from the Article, however, she said that she could see it reported that Johnny Roxburgh and Michael Fawcett had been brought in to organise the party after the memorial concert. She said that, as she had already explained elsewhere, she had an excellent source in Lady Elizabeth Anson, who knew Johnny Roxburgh, and that it was therefore highly likely that Lady Elizabeth Anson had provided the information that tensions had arisen over the afterparty and had supplied the quoted material referring to senior courtiers' views, including the concern that the Princes might be photographed "*falling out of the party in the early hours*". She said that she specifically recalled Lady Elizabeth Anson telling her on more than one occasion that this was a concern of the late Queen and the Duke of Edinburgh. She also said that the memorial concert itself had been well covered in the press, that there was information in the public domain, and that the Palace was promoting it and had issued press releases of which she would have been aware and which she would have used as background.

1113. Ms Nicholl further said that, insofar as the complaint concerned the line that the Princes hoped headliners, including Sir Elton John, would attend the party, she did not know what was meant by any suggestion that the Article reported private conversations involving Sir Elton John, because there were no references in the Article to private conversations of his. She said that, if the point was the line that the Princes hoped headliners including Sir Elton would attend, that information would likely have been provided by one of her sources and might also have come from other reporting around the concert. She added that Sir Elton was close to the late Princess Diana and was the headline act, and that it was therefore very plausible that the Princes would have wanted him to attend the afterparty.

1114. In cross-examination, Ms Nicholl accepted that she had no contemporaneous notes for this story and could not recall with certainty whether Lady Elizabeth Anson had in fact been the source, but she maintained that Lady Elizabeth Anson was one of her great contacts, that she was involved in planning many Palace parties, and that even where she was not formally the official organiser, she could be involved informally because she was trusted by the late Queen and was very experienced. Ms Nicholl also accepted that, while the event itself was highly publicised, the fact that the afterparty was taking place had been secret and that revealing that was the key point of the Article. When it was put to her that the evidence of Prince Harry and Mr Furnish was that this information had been communicated privately and not shared, she rejected the suggestion that the true source was voicemail interception and said that none of the information in the Article had been obtained in that way.

(c) The parties' submissions

1115. In their written closing submissions, the Claimants submitted, in substance, that the information in the Article was private and unlikely to have been obtained legitimately. They relied on the unchallenged evidence of Prince Harry and David Furnish that communications about whether Sir Elton John might attend the afterparty would have been private and directly between Prince Harry and Sir Elton, and likely to have involved voicemails. They submitted that Ms Nicholl's evidence as to sourcing was

speculative, that she had no contemporaneous notes, that she accepted that the fact of the party itself had been secret, and that she had not produced any prior articles or records supporting the information in her piece. They invited the Court to infer that, as was put to Ms Nicholl in cross-examination, the information had been obtained by voicemail interception.

1116. In its written closing submissions, Associated submitted that there was no specific pleaded allegation of UIG in relation to this Article. It said that the allegation put in cross-examination, without notice, was that Ms Nicholl had learned about the possible attendance of Sir Elton John at the party by listening to voicemails. Associated relied on Ms Nicholl's evidence that it was highly likely the information came from Lady Elizabeth Anson, a regular and well-connected source who knew Johnny Roxburgh, and that she specifically recalled Lady Elizabeth Anson telling her of concerns attributed to the late Queen and the Duke of Edinburgh about the Princes being photographed leaving the party in the early hours. Associated further submitted that the challenge to Ms Nicholl's evidence on the footing that Lady Elizabeth Anson was not formally one of the organisers was misconceived, because her evidence was that Lady Elizabeth Anson was often involved informally in Palace occasions. It submitted that the allegation of voicemail interception rested on nothing more than the supposed privacy of the information and lacked any evidential foundation.

(d) Discussion and conclusion

1117. I reject the allegation of UIG in relation to this Article.

1118. First, there was no specific pleaded allegation of UIG in relation to this Article. The case advanced at trial was therefore necessarily narrow. The allegation that emerged in cross-examination was that the information had been obtained by voicemail interception. That allegation was unpleaded.

1119. Second, I accept Ms Nicholl's evidence as to likely sourcing. I accept that she did not remember this Article well after the passage of time. But she gave a coherent account of why she believed it highly likely that the information came from Lady Elizabeth Anson, who was an excellent source of hers, knew Johnny Roxburgh, and was well placed to know what was going on behind the scenes in relation to Palace events. I also accept her evidence that she specifically recalled Lady Elizabeth Anson telling her that there was concern at the level of the late Queen and the Duke of Edinburgh that the Princes might be photographed "*falling out of the party in the early hours*".

1120. Third, I do not regard it as undermining Ms Nicholl's evidence that she had no contemporaneous notes for this story, or that she could not say with certainty in cross-examination that Lady Elizabeth Anson was the source. Ms Nicholl was candid in her evidence that, although she had retained many of her notebooks, she did not have all of them or all of her notes from across her career. At this distance in time from the events, that is not surprising.

1121. The event itself was plainly publicised. What the Article purported to reveal was the existence of the afterparty and resistance to it within the Household. Ms Nicholl's evidence was that the concert had been well covered, that the Palace was promoting it, and that there were press releases at the time which she would have used as background.

She accepted that the afterparty itself had been secret; but that is not a sufficient basis, without more, to conclude that the information must have been obtained unlawfully.

1122. Fourth, I reject the allegation of voicemail interception. The foundation for it was the submission that communications about whether Sir Elton John might attend the afterparty would have been private and likely to have involved voicemails. I have taken into account the unchallenged evidence of Prince Harry and David Furnish on that point. But that evidence does not establish that voicemail interception occurred. It is equally not enough to displace the sourcing evidence given by Ms Nicholl. There was no documentary material, note, message, payment record or other evidence pointing to voicemail interception in relation to this Article. This unpleaded allegation lacked any evidential foundation and I reject it.

1123. Taking the evidence as a whole, I am not satisfied that the Claimants have proved that this Article was obtained by, or was the product of, UIG. The claims in respect of this Article therefore fail.

(44) "*Jude and Sadie's school reunion*": *Mail on Sunday* 19 August 2007 (Katie Nicholl)

1124. This is referred to as the tenth Article relied upon in Ms Frost Law's claim.

1125. This was a brief item in the Katie Nicholl diary column, published in the *Mail on Sunday*, on 19 August 2007. The Article began by referring to rumours in Hollywood that Mr Law's attempts to woo Cameron Diaz had been successful, but stated that he had "*someone closer to home on his mind*". It reported that, according to "*a close friend*", Mr Law had been having "*summit meetings*" with his ex-wife, Ms Frost Law, over their eldest son, Rafferty, who was said to be about to enter "*an extremely liberal public school*". The Article then attributed to a "*Primrose Hill spy*" the assertions that Ms Frost Law had been "*in tears about him leaving as she is not sure it's right*", that Mr Law had been "*a shoulder for her to cry on*", that he was having "*lots of chats with Rafferty and supporting Sadie as best he can*", and that "*the whole family is to drive to Hampshire for the start of term*".

(a) The issues

1126. The information alleged to have been obtained by unlawful acts is pleaded as "*Information as to the welfare of the Claimant's son, Rafferty, including as to her communications and her feelings*". No specific allegation of UIG was pleaded in relation to this Article. The case, first put to Ms Nicholl at trial, was that the information had been obtained by her "*listening in to voicemails*", an allegation that she denied as "*completely untrue*". The issue for determination is therefore whether, on the evidence as a whole, Ms Frost Law has proved, on the balance of probabilities, that the information in the Article was obtained by unlawful means carried out or commissioned on Associated's behalf.

(b) The evidence

1127. In her evidence, Ms Frost Law said that the Article contained private information about the decision to send Rafferty to public school and about her conversations with Mr Law on that subject. She said that, after the divorce, she and Mr Law discussed these matters over the telephone, including by landline and voicemail, and that Rafferty also spoke to

Mr Law daily on the landline. She said that Rafferty had wanted to go to boarding school to get away from the effects of press intrusion, that at the time it had felt positive that she and Mr Law were able to discuss the issue and get on again, and that she then worried that he would think she had leaked the information. She also said that it was upsetting that the newspaper had made Rafferty "*become a story*".

1128. Mr Law also addressed the Article. He said that the information in it was "*specific, accurate and private*". His evidence was that he was, at the time, having "*lots of chats*" with Rafferty and meeting Ms Frost Law to discuss and support her because she was upset that Rafferty wanted to go to boarding school. He said that he was in constant dialogue with both of them, that this involved voice messages, and that the information was "*incredibly private*", being confined to the three of them.

1129. Ben Jackson gave evidence to like effect, saying that conversations about Rafferty starting boarding school were "*very personal and super private*" and that he did not believe Mr Law would have discussed them with anyone other than Ms Frost Law and Rafferty.

1130. Ms Nicholl did not claim an independent recollection of the Article. In her witness statement, however, she said that when first asked about its sourcing she thought it might have come from Holly Millbank, a freelancer who worked regular shifts on the diary and who had a contact who knew a member of the Frost family. She said that she was subsequently shown a payment record, recording a payment of £400 to Sharon Feinstein, on 19 August 2007, the same date as the Article, with the description "*Jude Law and Sadie F*", and that this suggested to her that Ms Feinstein had helped to stand up the story and had been paid for her assistance. She further said that Ms Feinstein was a freelance journalist she often used, that she had excellent contacts including sources on Ms Frost Law and Mr Law, and that she understood Ms Feinstein to have confidential sources very close to both of them.

1131. In cross-examination, it was put to Ms Nicholl that Ms Frost Law and Mr Law had explained that these were private matters discussed between them by voicemail, and that the information had been obtained by "*listening in to voicemails*". She rejected that allegation, describing it as "*completely untrue*". She accepted that she had no note of Ms Feinstein providing the information, but maintained that the payment record had jogged her memory that Ms Feinstein was the relevant source.

(c) The parties' submissions

1132. Ms Frost Law submits that the information in the Article was private, specific and confined to a very small circle. She relies on her own evidence, and that of Mr Law and Mr Jackson, that the discussions about Rafferty's schooling were highly personal and took place by landline and voicemail. She further submits that this evidence was not challenged in cross-examination. She points to the fact that Ms Nicholl had no note of the source material and could only point to the payment to Ms Feinstein, and she relies on the absence of any evidence from Ms Feinstein herself. On that basis, she invites the Court to infer that the information was obtained unlawfully, in particular by voicemail interception.

1133. Associated submits that no specific allegation of UIG was pleaded in relation to this Article and that the allegation of voicemail interception was advanced only at trial.

It relies on Ms Nicholl's evidence that the information came from Ms Feinstein, who was paid for the story, and on her evidence that Ms Feinstein had confidential sources close to Ms Frost Law and Mr Law. It submits that the only basis identified for the allegation of unlawful acquisition was the private nature of the information and the fact that Ms Nicholl had their telephone numbers, and that this is insufficient to prove UIG on the balance of probabilities. Associated therefore submits that the claim in relation to this Article should be dismissed.

(d) Discussion and conclusion

1134. I accept that the information in this Article was private and concerned sensitive family matters relating to the welfare of a child. I also accept the evidence of Ms Frost Law, Mr Law and Mr Jackson that discussions about Rafferty going to boarding school were, in general, matters that would ordinarily have been confined to Ms Frost Law, Mr Law and Rafferty himself. But that does not answer the issue I have to decide. The question is not whether the information was private, but whether Ms Frost Law has proved, on the balance of probabilities, that it was obtained by unlawful means carried out or commissioned on Associated's behalf.

1135. In my judgment, she has not done so. No specific mechanism of UIG was pleaded in relation to this Article. The allegation that the information was obtained by "*listening in to voicemails*" was first put to Ms Nicholl in cross-examination. That was a serious allegation. It was unsupported by any article-specific documentary material showing voicemail interception, by any note or communication evidencing such conduct, or by any other evidence identifying who was said to have intercepted any voicemail, whose voicemail was intercepted, or how the content of any such message was communicated to Ms Nicholl. The private nature of the information, and the fact that telephone and voicemail communications took place between Ms Frost Law and Mr Law, are not in themselves sufficient to establish that such unlawful conduct occurred.

1136. I should also deal expressly with the way in which this Article was addressed in closing submissions by reference to Sharon Feinstein. Ms Nicholl's evidence was that the contemporaneous payment record suggested that Ms Feinstein had "*helped to stand up the story*" and had been paid for her assistance, and that she understood Ms Feinstein to have confidential sources close to Ms Frost Law and Mr Law. That was the evidential footing on which Ms Nicholl dealt with this Article.

1137. It was not pleaded, however, that Ms Feinstein herself had obtained the information in this Article by voicemail interception or any other form of UIG; nor was it pleaded that Ms Nicholl knew that to be so. In relation to this Article, no specific allegation of UIG was pleaded. The case advanced at trial was that Ms Nicholl had herself obtained the information by "*listening in to voicemails*".

1138. That distinction matters. In cross-examination, what was put to Ms Nicholl was that she had obtained the information relating to these "*super private*" discussions through listening in to voicemails. She denied that allegation as "*completely untrue*". It was not put to her that Ms Feinstein had obtained the information by voicemail interception, nor that Ms Nicholl knew that Ms Feinstein had done so.

1139. In those circumstances, it is not open to the Claimants to seek findings, by way of closing submissions alone, that Ms Feinstein obtained the information for this Article

by voicemail interception, or that Ms Nicholl knew that this was how it had been obtained. As with the approach I have already explained elsewhere in this judgment in relation to allegations advanced against non-parties (see [61]-[62] above), I record the way in which the parties sought to put their cases, but unless I expressly state otherwise I make no findings of fact that Ms Feinstein engaged in UIG in relation to this Article. Quite apart from the pleading point, there is no evidential foundation for such a finding beyond speculation.

1140. Standing back, therefore, the Article comes to this. I accept that it contained private information concerning sensitive family matters. I also accept the evidence of Ms Frost Law, Mr Law and Mr Jackson that discussions about Rafferty's schooling were highly personal and ordinarily confined to a very small circle. But the question I must decide is whether Ms Frost Law has proved, on the balance of probabilities, that the information in the Article was obtained by unlawful means carried out or commissioned on Associated's behalf. For the reasons I have given, she has not done so. I accept Ms Nicholl's evidence as to the likely sourcing of the Article, namely that Sharon Feinstein helped to stand up the story and was paid for her assistance, and I accept Ms Nicholl's denial of UIG in relation to this Article. In particular, I reject the allegation that Ms Nicholl engaged in voicemail interception in order to obtain the information published in it. The alternative case, advanced in closing, that Ms Feinstein did so, with Ms Nicholl's knowledge, was neither pleaded nor put, and is unsupported by evidence. It follows that the claim in respect of this Article fails.

(45) *"LAWRENCE SENSATION. Exclusive: Ten years after Mail accused these men of murdering black teenager Stephen Lawrence they face re-arrest after dramatic forensic breakthrough WILL FIVE FACE NEW TRIAL?"*: *Daily Mail* 8 November 2007 (Stephen Wright)

(46) *"Lawrence: The vital blunders"*: *Daily Mail* 9 November 2007 (Stephen Wright)

1141. Articles (45) and (46), are the fourth and fifth Articles relied upon by Baroness Lawrence in her claim. They were published on consecutive days and have been treated together by the parties.

1142. The first Article, published on 8 November 2007, reported a dramatic forensic breakthrough in the Stephen Lawrence investigation and the possibility that the five men, whom the *Daily Mail* had accused of murder in 1997, might again face prosecution. The second Article, published on 9 November 2007, was a follow-up piece focusing on the investigative and forensic failings said to have delayed progress in the case. Both Articles contained sensitive information about the state of the police investigation, the forensic development that had taken place, and the fact that Baroness Lawrence and her lawyers had been informed of progress in the case.

(a) The issue

1143. The issue is whether Baroness Lawrence has proved that the information in these Articles was obtained by UIG. In the form in which the case was ultimately advanced at trial, the central contention was that Mr Wright obtained the information through paying John Ross, as his "*special contact*", for information obtained through corrupt police officers, and that the two cash payments were part of that unlawful mechanism.

(b) The evidence

1144. In his first witness statement, Mr Wright said that the information in the 8 November 2007 Article came from a confidential source who was a senior police officer, but not a member of the Stephen Lawrence murder investigation team. He said that this source told him of the forensic breakthrough because the source believed that the development would soon leak out and thought that, given Mr Wright's long reporting and campaigning on the Lawrence case, he should know about it. Mr Wright said that he did not pay that source. He further said that, on 7 November 2007, he put the story to the MPS press office and was told that the story was correct and that a statement would be made to the press. He also said that he considered it in the public interest to report that forensic evidence had previously been overlooked. In relation to the second article, he said in his second witness statement that, by that stage, the media reaction to the 8 November story and the MPS statement had generated further coverage, and that his report on 9 November was also informed by other media commentary and by material which had come to him from Peter Rose.

1145. Mr Wright also addressed the references in the Articles to Baroness Lawrence having been informed or alerted. In his second witness statement he said that, in the 8 November article, the phrase "*it was thought that Lady Lawrence had been alerted*" may have come from one of three sources: his confidential source, the MPS press office, or his own inference that the MPS would inform Baroness Lawrence of such a major development. As to the 9 November Article, he said that he remembered listening to BBC Radio 4's *Today* programme and gaining the impression that either Baroness Lawrence or a representative, such as Mr Khan KC, had been informed, and that he thought his report on 9 November was based on that or similar media coverage. In cross-examination, he accepted that he could not now be precise after so many years, but maintained that he was trying to assist the Court as best he could.

1146. The Claimants also rely upon the evidence of DCI Clive Driscoll. In his witness statement, DCI Driscoll expressly confirmed the truth of the witness statement he made to the Leveson Inquiry, on 14 March 2012, and stated that he had also given oral evidence there on oath. In that earlier evidence, which he thus adopts in these proceedings, he described the progress of the Stephen Lawrence investigation as being kept very close and disseminated only on a "*need to know*" basis. He explained that a decision had been taken not to share the new forensic findings with the press and said that a meeting took place at New Scotland Yard, on 7 November 2007, to update Baroness Lawrence and her legal team, which had been kept secret. He stated that, less than two hours after the meeting ended, press enquiries were being made, followed the next day by the *Daily Mail* Article, and that the information in that Article reflected information discussed at the meeting.

1147. DCI Driscoll also stated that there had been an MPS review of the leaked information and that he believed Mr Wright had confirmed that no police source had been involved, and that the reference to a police source in the Article had been inserted as an assumption by a junior copy writer.

1148. Mr Wright disputed those aspects of DCI Driscoll's account that bore upon what Mr Wright had said to the leak review. He said that DCI Driscoll was mistaken in stating that he had denied a police source had been involved. He referred to his Leveson evidence, in which he said he had made clear that no one on the investigation team was

responsible and that he was unwilling to go further because of the process of elimination risked identification of his source. He said that he would not have used the phrase "*junior copy writer*", which he regarded as meaningless. More generally, he denied that the information in the 8 November Article had come from the 7 November meeting, denied that he knew of the meeting before publication, and said that the sourcing had been ethical. He also denied the suggestion that no officer was legitimately providing information to him and said that it was quite wrong to suppose that every story came from John Ross.

1149. Mr Wright was also cross-examined about the two cash payments: (i) "*£1,000 special contact re Stephen Lawrence DNA cock-ups page lead*"; and (ii) "*£500 for special inquiries*". He said that the £1,000 payment was to Peter Rose, a former *Daily Mail* crime correspondent and later freelance journalist, and that it was, in substance, a "*kill fee*". His explanation was that, on the day the first Article was published, Mr Rose offered him information for the follow-up story, including material about an incriminating dog hair, but Mr Wright had already been told enough to know the broad story and did not want Rose to sell his information elsewhere, in particular to a rival newspaper. He therefore agreed to pay Rose in cash, and he said that the description "*page lead*" reflected that the material related to the planned follow-up page lead on 9 November. He further explained that Rose, who was seriously ill by then, preferred cash. As to the £500 payment, Mr Wright said in his second witness statement that he could not be sure what it related to: it might have been another tip or piece of information from Peter Rose, or it might have related to a different source or story. He was clear, however, that it was not a payment to a serving police officer, because he had never done that.

1150. The broader evidential context included the material concerning John Ross and the evidence of Derek Haslam and David Wood, which I have summarised in relation to Article (21) (see [659]-[686] above) and in Appendix 2. In outline, the Claimants relied on Mr Haslam's evidence that Rees said Ross worked as an intermediary for information obtained from corrupt police officers and sold to newspapers including the *Mail* titles; that Ross had targeted Baroness Lawrence and the Lawrence investigation; and that unlawful methods were used in that milieu. Associated relied in response on the evidence of Mr Wood, who did not recall any report implicating the Mail titles or their journalists in that way, and on Mr Wright's own denial that he had ever paid Ross to pay a serving police officer. In cross-examination, Mr Wright was also taken to material from *Flat Earth News* and the Leveson Inquiry concerning an anonymised former police officer allegedly acting as an intermediary between journalists and corrupt serving officers. It was put to him that the person referred to was Ross and that this was what Ross was doing for him. Mr Wright denied that suggestion.

(c) The parties' submissions

1151. Baroness Lawrence submits that the two Articles could only have been sourced through the leaking of highly sensitive information by police officers before Baroness Lawrence and her legal team had any realistic opportunity to digest and act on what they had been told. She relies heavily on DCI Driscoll's evidence that the information was kept exceptionally close; that the 7 November meeting was secret; that the details in the 8 November Article reflected what had been discussed at that meeting; and that the resulting publicity caused significant harm to the relationship between the police and the Lawrence family. Baroness Lawrence relies on the fact that her evidence (and that

of Mr Khan KC) about how tightly the information was kept was not challenged by Associated. She further submits that DCI Driscoll's evidence that Mr Wright had told the review that no police source had been involved, and that the reference to a police source was merely an assumption inserted by a junior copy writer, is inconsistent with Mr Wright's present case that his source was a senior police officer outside the investigation team. She submits that this inconsistency seriously undermines his credibility.

1152. Baroness Lawrence also submits that the references in the Articles to her having been informed or alerted, and to her lawyers being notified, demonstrate knowledge of the 7 November meeting and cannot be explained by the vague and shifting accounts given by Mr Wright in his witness statements. She submits that the explanation based on the *Today* programme cannot stand, because the BBC material relied on did not say that Baroness Lawrence had been informed in the way the Article suggested, but rather that she had been dismayed by newspaper reports. Combined with the secrecy of the investigation, the timing of the meeting, and DCI Driscoll's evidence, Baroness Lawrence submits that the proper inference is that these articles were the product of an unlawful leak.

1153. In relation to mechanism, Baroness Lawrence submits that the Court should infer that the information was obtained through corrupt payments to police officers, using Ross as an intermediary. She relies on the broader evidence concerning Ross, including the evidence of Mr Haslam, the material from *Flat Earth News*, Mr Wright's later contact with Ross, and what she characterises as suspicious features of his evidence about cash payments. She submits that the two cash payments relate to these articles and that the wording "*special contact re Stephen Lawrence DNA cock-ups page lead*" strongly indicates a source for the 9 November follow-up. She argues that the use of the term "*special contact*" is euphemistic and designed to conceal the true nature of the payment and that the explanation that the £1,000 was paid as a kill fee to Peter Rose is implausible. The contrast with other cash-payment records, she submits, tends to show that both payments related to the same story or story sequence. On that basis, she submits that the Court should find that Mr Wright paid Ross, who in turn paid a corrupt police officer for the information.

1154. Associated submits that Baroness Lawrence has not proved any UIG in relation to either Article. It relies principally on Mr Wright's evidence that the information in the first Article came from a confidential, but legitimate, police source who was not on the investigation team, together with his evidence that he checked the story with the MPS press office and was told that a statement would be made. It submits that this was ordinary journalistic practice and that it is unsurprising that a journalist of Mr Wright's experience, with long-standing professional relationships in policing and the MPS press office, could receive accurate confidential information about the progress of a major police investigation without any corrupt payment.

1155. Associated further submits that DCI Driscoll's evidence does not establish the pleaded allegation. It accepts that his evidence demonstrates how damaging the publication was from the perspective of the investigation and the family, but submits that his account of what Mr Wright said in the leak review was not based on any signed statement from Mr Wright and is unreliable as proof that Mr Wright denied having a police source. Associated submits that the position stated by Mr Wright at the Leveson Inquiry – namely that no one on the investigation team was responsible, and that he was unwilling

to go further because of source protection – is not inconsistent with his current account. To the extent that Baroness Lawrence relies on any prior inconsistency in Mr Wright's account of the nature of his source, Associated submits that this goes, at highest, to credit and does not, without more, establish the pleaded allegation that the information in these Articles was obtained through corrupt payments to a police officer via Mr Ross. It also submits that, at the time, even Baroness Lawrence herself believed that the Articles were the product of police leaks, and that the possibility that police officers outside the core investigation team were talking to journalists is therefore entirely consistent with the contemporaneous understanding of events.

1156. As to Ross and the cash payments, Associated submits that the Claimants' case shifted materially from the pleaded position to the eventual allegation put in cross-examination, and that the final allegation was unsupported by any proper evidential basis. It relies on the points advanced more generally in relation to Ross and *Flat Earth News*: that the material was anonymous hearsay; that it did not identify Mr Wright or these Articles; that the evidence of Mr Haslam was too general and too lacking in article-specific corroboration to support the inference sought; and that Mr Wood's evidence undermined the suggestion that there had been contemporaneous police intelligence implicating the *Mail* titles in that way. As to the payments, Associated submits that Mr Wright's explanation should be accepted. The £1,000 was a perfectly plausible cash payment to Peter Rose for information relating to the follow-up story which Mr Wright wished to prevent being provided to a competitor. The description "*page lead*" accords with the fact that it related to the inside-page lead article on 9 November. Finally, Associated submits there is no basis for treating the further £500 as a payment to a serving police officer rather than some other source, tip or unrelated matter.

(d) Discussion and conclusion

1157. I do not accept that Baroness Lawrence has proved UIG in relation to either of these articles. I begin with the evidence of Mr Wright. For reasons I have already explained in Appendix 2 and in relation to Article (21), I found him to be a truthful though at times argumentative witness. I accept his evidence that there was a confidential police source, outside the investigation team, who provided him with information about the forensic breakthrough. I also accept his evidence that he did not pay that source and that he put the story to the MPS press office. In a case of this profile, involving a journalist who had followed the Lawrence investigation for many years and had a long-developed network of professional police contacts, the existence of such a source and of such sourcing is not inherently implausible.

1158. I have considered DCI Driscoll's evidence with care. It is plainly important. I accept, without hesitation, his evidence that the investigation team sought to keep the progress of the investigation confidential; that the meeting on 7 November 2007 was intended to be secret; that the publication of the 8 November Article was deeply damaging from the standpoint of the investigation and the relationship with the Lawrence family; and that the information in the Article substantially reflected information discussed at the meeting.

1159. All of that supports the conclusion that there was a leak, or leaks, of sensitive information. But it does not establish the unlawful mechanism alleged by Baroness Lawrence. To the extent that Baroness Lawrence relies on any prior inconsistency in Mr Wright's account of the nature of his source, that point goes, at highest, to credit;

it does not, without more, establish the pleaded allegation that the information in these Articles was obtained through corrupt payments to a police officer via Mr Ross.

1160. In particular, I am not satisfied that DCI Driscoll's account of what he believed Mr Wright had said in the leak review – namely, that no police source had been involved and that the reference to a source had been inserted by a junior copy writer – is a sufficiently secure basis on which to reject Mr Wright's present account. Mr Wright's actual Leveson evidence, as reflected in the transcript put to him, was that no one on the investigation team was responsible and that he was unwilling to go further because of source protection. That is not the same thing as saying that no police source was involved at all. I therefore do not regard DCI Driscoll's evidence on that particular point as sufficient to discredit Mr Wright's present account.

1161. Nor do I consider that the references in the two Articles to Baroness Lawrence having been informed or alerted, and to her lawyers being notified, carry the matter materially further. Mr Wright's inability, many years later, to be precise as to the provenance of those details is understandable. His suggested explanations are not entirely satisfactory in every respect, and I accept that the *Today* programme material does not obviously support all that he suggested it might. But the existence of some uncertainty in his explanation of those details does not justify the serious inference which Baroness Lawrence asks me to draw, namely that the articles must therefore have been sourced through corrupt police payments.

1162. I turn, then, to the central allegation that Mr Wright used John Ross as an intermediary for corrupt payments to police officers and that the cash payments evidence that mechanism. I am not satisfied that the Claimants have proved the broader allegation that Mr Wright generally used Ross in that way. As I have explained elsewhere, Mr Haslam's evidence provides some support for the proposition that Ross was spoken of in the Southern Investigations milieu as someone who worked with Rees and sold information to newspapers, including the *Mail* titles. But the evidential value of that evidence is limited. It is generalised, unsupported by contemporaneous documents before the Court, and does not identify any article-specific transaction involving Mr Wright, Ross and the information published here. I reach the same conclusion in relation to the *Flat Earth News* point. The material relied upon by the Claimants, and the cross-examination founded upon it, simply cannot bear the construction which the Claimants seek to place upon it. It is anonymous hearsay and does not identify Mr Wright, these Articles, or any specific transaction relevant to them.

1163. More importantly, there is no evidence linking Ross to the sourcing of these Articles. There is no direct evidence that Ross was involved. There is no documentary evidence linking him to the stories. There is no evidence from any police officer, corrupt or otherwise, that Ross was paid to obtain the information. The case therefore depends on inference. In my judgment the evidential foundation is too weak to sustain the inference sought.

1164. I also accept Mr Wright's evidence about the £1,000 payment. Although the description "*special contact re Stephen Lawrence DNA cock-ups page lead*" is capable of prompting suspicion, Mr Wright's explanation that it was a cash payment to Peter Rose for information relevant to the 9 November page-lead follow-up article is not implausible. Nor do I consider it inherently incredible that such a payment might be made in cash to a respected freelance journalist and former colleague who,

on Mr Wright's evidence, wished to be paid that way. The Court is not required to accept every detail of Mr Wright's explanation in order to conclude that Baroness Lawrence has failed to prove the much graver alternative.

1165. As to the further £500 payment, Mr Wright was unable to be sure what it related to. That uncertainty does not assist Baroness Lawrence. It remains entirely speculative to conclude from it that it was a corrupt payment to a police officer, whether via Ross or otherwise.

1166. Standing back and considering the evidence as a whole, I am not satisfied that Baroness Lawrence has proved that either of these articles was the product of UIG. I accept Mr Wright's evidence that the core story came from a confidential police source outside the investigation team, and not from corrupt payments. The damaging publication of sensitive information is undeniable. But that does not, without more, establish the unlawful mechanism alleged in this litigation. Baroness Lawrence has therefore failed to prove UIG in relation to Articles (45) and (46).

(47) "*Harry takes Chelsy on a make-or-break holiday*": *Daily Mail* 8 December 2007 (Rebecca English)

1167. This is the eleventh Article relied upon by Prince Harry in his claim.

1168. The Article was published in the *Daily Mail*, on Saturday 8 December 2007, under the headline "*Harry takes Chelsy on a make-or-break holiday*" and was bylined to Rebecca English. It concerned Prince Harry's relationship with Chelsy Davy, and in particular their proposed holiday and travel plans, presenting the trip as a significant moment in the relationship. The Article contained the following sentence: "*The couple will fly out this weekend after a series of heart to hearts about their future*".

1169. In Prince Harry's statement of case, the information alleged to have been obtained by unlawful acts is "*information as to the Claimant's relationship with Chelsy Davy including as to their holiday plans and feelings*". No specific allegation of UIG was advanced in the pleaded case. At trial, Prince Harry relied upon an email from Mike Behr to Rebecca English (see [1174] below), which included precise details as to Chelsy Davy's flights to South Africa, as demonstrating UIG in connection with the Article.

(a) The issues

1170. The issue is whether Prince Harry, Duke of Sussex has proved, on the balance of probabilities, that UIG was used in relation to the Article for which Associated is responsible. The Article plainly concerns matters of a private character. But the question is not simply whether it contained private information; it is whether Prince Harry has proved UIG in connection with the Article.

1171. More specifically, the questions raised by the evidence are: first, what weight should be given to Prince Harry's evidence as to the privacy of the information; secondly, what significance attaches to the email, of 7 December 2007, from Mike Behr to Rebecca English and Duncan Larcombe, which contained precise flight details for Chelsy Davy; thirdly, whether the Article can credibly be explained by material already in the public domain, coupled with ordinary journalistic or social sourcing.

(b) The evidence

1172. In his evidence, Prince Harry stated that the Article contained private and sensitive information about his relationship with Chelsy Davy, including the proposed "*make-or-break*" holiday, her plans to quit university and return to South Africa, and the purchase of a property in Cape Town by her parents. His evidence was also that the only conceivable way to find out his flight details was through Chelsy Davy, because he travelled under a pseudonym. Prince Harry's witness statement contained little by way of detail as to whether he and Ms Davy had actually travelled together, and if so, when and to where.

1173. Prince Harry's evidence was not challenged in cross-examination, and I accept it as supporting the proposition that the Article dealt with private matters. However, it says little about how the information was in fact obtained. It also cannot exclude the possibility that Chelsy Davy shared some or all of the information with her social circle.

1174. The critical evidence is an email, dated 7 December 2007, from Mike Behr, a freelancer in South Africa, to Ms English and copied to Duncan Larcombe at *The Sun*. The email – which was disclosed in News Group litigation – contains the following:

> "its confirmed with seat numbers. maybe you and duncan can plant someone next to her?
>
> **Heathrow (London) Terminal 1 - Johannesburg Terminal A, Sun 9 Dec 2007, 21:05**
>
> | | |
> |---|---|
> | Flight: | SA0237 |
> | Status: | Confirmed |
> | From: | Heathrow (London) Terminal 1 |
> | To: | Johannesburg Terminal A |
> | Depart: | Sun 9 Dec 2007, 21:05 |
> | Arrive: | Mon 10 Dec 2007, 10.10 |
> | Duration: | 11hrs 5mins |
> | Class: | |
> | Operated by: | South African A L |
> | Seats: | 67K |
>
> **Johannesburg Terminal B - Durban, Mon 10 Dec 2007, 12:55**
>
> | | |
> |---|---|
> | Flight: | SA0555 |
> | Status: | Confirmed |
> | From: | Johannesburg Terminal B |

To:	Durban
Depart:	Mon 10 Dec 2007, 12.55
Arrive:	Mon 10 Dec 2007, 14.05
Duration:	1hr mins
Class:	
Operated by:	South African A L
Seats:	19A"

1175. In her first witness statement, Rebecca English said that she did not remember the Article. She described it as "*a very short piece in the middle of the Saturday paper*" and "*not an exclusive*". She said that, from its content, she thought it likely to have come from sources she had developed at Leeds University who were friends of Chelsy Davy and part of her circle. She explained that, when it emerged that Ms Davy would be studying at Leeds University, she, with other journalists, went there and left contact details with students who were "*generally very chatty*", and that she would check in with such sources periodically, especially towards the end of term, as a likely point when Chelsy Davy might be meeting up with Prince Harry. She also said that students would occasionally be paid modest sums for good information.

1176. In the same statement, Ms English referred to a petty-cash slip, dated 19 December 2007, for £200 marked "*Money for Chelsy tip*" and thought that it was possible, in light of the timing and her practice, that this was a payment to a student at Leeds University in relation to this story, although she did not remember whether it was for this story or for one of those sources. She also referred to an article that appeared the same day in the *Daily Star*. Reading it now, she said that it appeared to her to carry the same broad information – that the couple were going on holiday together – with the additional detail of where they were going; and that this made her think that the same tip, or the same information, may have been given to multiple papers.

1177. Importantly, by 2 December 2007, there was already public reporting to similar effect. In her first witness statement, Rebecca English specifically referred to earlier reporting in other newspapers that Chelsy Davy would "*be flying home to South Africa after terms ends this Friday*" and that she was planning to spend time in South Africa before joining her brother and other family members in Kenya over Christmas. She did not recall reading those articles at the time, but suggested that it was possible that she would have done as she was "*generally across the stories published by these titles*". Significant aspects of the relationship story – such as serious "*heart to hearts*", strain in the long-distance relationship, reluctance to move permanently to the UK, and property arrangements – were either already in public reporting or, at least, not exclusive to this Article.

1178. Dealing with the apparent involvement of Mike Behr, in her first witness statement Ms English said that she did not remember asking Mike Behr to assist on this Article. She suggested that it was possible that, if she had been tipped off that a holiday was planned, she might have asked Mr Behr if he had heard anything from sources that might confirm it. More generally, she said that if she thought a visit likely, she might

then ask Mr Behr if he had heard anything or could find anything out through his contacts. She said he might sometimes tell her a contact of his had confirmed the date or time that they were flying in to Cape Town, but he generally would not give her any "*more concrete details*" than that. Her recollection was that he would usually say something along the lines of, "*I think they are likely to be on this flight at this time, because I've been told this by my contact*", but that was as much detail as she remembered him giving to her.

1179. Ms English said she did not remember receiving the email of 7 December 2007 from Mr Behr. She thought that, if she had read it at the time, she would have remembered it as it was "*not typical*" of the sort of information she would ask for or receive from him. His language about "*planting someone next to*" Chelsy Davy was, she said, "*alien*" to her. In her second witness statement, Ms English maintained that the Behr email was "*not the sort of detail that I remember asking for or receiving from Mike Behr*".

1180. In cross-examination, Ms English was challenged directly that student sources at Leeds University could not have known the travel plans of Prince Harry and Chelsy Davy. Her answer was not that such sources would know precise detail. On the contrary, she accepted that they "*wouldn't know exact details*" and that the Article was not itself detailed in that way, but she maintained that they would know "*roughly what was going on*", and that they were part of Chelsy Davy's social set. When it was put to her that Chelsy Davy would not have been discussing her intimate feelings and a "*make-or-break*" holiday with Leeds students, she rejected that and maintained that friends in her social circle at university could have known.

1181. She was also cross-examined closely on the 7 December 2007 email from Mike Behr. It was put to her that the timing in the email – showing Ms Davy travelling on Sunday 9 December – matched the Article's statement that "*the couple will fly out this weekend*", and that this was therefore the true basis of the published story. She rejected that. Her evidence was that the email did not refer to Prince Harry at all, but only to Chelsy Davy travelling to Durban, where her family had a holiday home; whereas her story was about the couple going away together on a joint holiday after term ended. She said she believed she had been told by a contact at Leeds University that, once term ended, Chelsy Davy would be going away with Prince Harry. In re-examination, she returned to that distinction, saying in terms that the information in the Article was different from the flight information in the Behr email.

1182. Earlier material relating to Mike Behr was also put to Ms English. In her first witness statement, she referred to a 2006 incident as an example of an arrangement under which she and Duncan Larcombe, a journalist at *The Sun*, shared the cost of Mr Behr's time. Her evidence was, however, that she understood he had been directed independently by *The Sun* to carry out flight-related work and that neither the request nor the results of that work had been shared with her; she said that she did not remember the incident or what information, if any, Mr Behr had provided to her on that occasion.

1183. In cross-examination in relation to this episode of working with Mr Larcombe, she was taken to an email, of 13 April 2006, from Mr Behr to Mr Larcombe, headed "*Chelsy airline search*", in which, as it was put to her, Mr Behr referred to "*the cost of the airline searches*" and said that he had billed Ms English "*£200 for half the cost*". She was then shown related search material, which contained information about Ms Davy's flights between South Africa and London in detail similar to that provided by Mr Behr in his

email of 7 December 2007. Ms English rejected the proposition that this showed she had commissioned airline searches from Mr Behr. Her evidence was that the email had not been sent to her; that it was a conversation between two other people about money; that the reference to £200 was her contribution to a shared day rate for Mr Behr's work rather than payment for airline-search costs; and that she had never asked Mr Behr to carry out an airline search for her or received that information from him. When it was put to her that the documents showed the cost of the searches themselves being split between her and Larcombe, she maintained that this was a misinterpretation, repeated that she had not commissioned airline-search work, and adhered to the account given in her witness statement.

(c) The parties' submissions

1184. Prince Harry submits that the Article concerned private and sensitive matters and that there is no plausible lawful explanation for its contents. He relies in particular on the Behr email of 7 December 2007, submitting that it plainly contains unlawfully obtained travel data; that it was sent to Rebecca English the day before publication; and that the Article's reference to the couple flying out that weekend corresponds with the flight dates in that email. He also submits that the earlier Behr material demonstrates a pattern of obtaining airline data in relation to Chelsy Davy, and that this strengthens the inference that Ms English was again using improperly obtained travel information in connection with the Article.

1185. Associated submits that the Article was legitimately sourced from Rebecca English's social and university contacts, together with material already in the public domain. It relies on the fact that, by 2 December 2007, there was already public reporting that Chelsy Davy was returning to South Africa after term ended and would be in Kenya with her family over Christmas, and on the same-day *Daily Star* article as showing that similar information was circulating more widely. It further submits that the Behr email concerned only Chelsy Davy's flights to Durban and did not correspond to the joint holiday described in the Article, and that the Article did not itself deploy any of the distinctive, granular data contained in the email.

(d) Discussion and conclusion

1186. I accept Prince Harry's evidence that the Article concerned private matters. His evidence was not challenged and is sufficient to show that the relationship, the suggested "*make-or-break*" holiday, and aspects of Chelsy Davy's future plans were matters in respect of which privacy interests were engaged. But that does not determine the critical question in this part of the case, namely whether Prince Harry has proved that the Article was sourced through or utilised UIG.

1187. I accept that the email sent by Mike Behr on 7 December 2007 is incriminating. It contained precise flight information for Chelsy Davy, including seat numbers, of a kind that is not readily explicable by ordinary journalistic inquiry, observation or social sourcing. The language of the email also tends to suggest that it was not a purely gratuitous or unsolicited communication, but was responsive to some prior interest or enquiry. The email does, therefore, raise at least a *prima facie* case that Mr Behr unlawfully obtained flight information relating to Chelsy Davy which was sent to Rebecca English.

1188. However, the central difficulty for Prince Harry is that, beyond the general proposition that Chelsy Davy was taking a flight "*this weekend*", the distinctive content of that email does not find expression in the Article itself. On the contrary, the specific travel information in the email points towards Ms Davy flying to Durban, where, according to Ms English's evidence, her family had a holiday home. That is not consistent with the published presentation of the trip as a romantic holiday being taken by the couple together.

1189. In that respect, there is force in Ms English's evidence that the Behr email and the Article were not speaking about the same thing. Her account was that the email concerned Ms Davy travelling to Durban, whereas the Article was a broader relationship story about the couple supposedly going away together after a series of "*heart to hearts*". In my judgment, that distinction cannot be dismissed as unimportant. Indeed, one realistic possibility is that contacts in Ms Davy's circle at Leeds University knew, or thought they knew, that Ms Davy was taking a flight "*that weekend*", and either confused or conflated that information with the belief that she was flying away on holiday with Prince Harry. That possibility is consistent with Ms English's evidence that such contacts would not know exact travel detail, but might know "*roughly what was going on*".

1190. The difficulty in resolving that issue more firmly is compounded by the absence of any evidence from Ms Davy or more specific evidence from Prince Harry as to when any holiday with Ms Davy was in fact planned, where it was to take place, and how it related, if at all, to the flights identified in the Behr email. Prince Harry's unchallenged evidence establishes the privacy of the matters reported in the Article. But it does not materially assist in determining whether the particular travel data contained in the Behr email was, in truth, part of the same factual narrative as the holiday described in the Article.

1191. When assessing the Claimant's inferential case, there are several further points.

(1) First, the information in the Article was readily explicable by the sourcing advanced by Ms English. I accept her evidence that she had developed sources within Leeds University who were part of Ms Davy's social circle and that those sources could know, and pass on, the sort of social information reflected in the Article. The suggestion that student sources at Leeds University could not have known about Ms Davy supposedly going away with Prince Harry is too absolute. Details of that kind, whether accurate, partly accurate, or affected by misunderstanding or embellishment, are precisely the sort of relationship gossip that might circulate within a close university social circle and then be repeated to a journalist contact. In that respect, the information in the Article is far more readily explicable by the Leeds sourcing described by Ms English than by the precise flight information contained in the Behr email.

(2) Second, there is no documentary evidence that Ms English commissioned Mr Behr to obtain the 7 December 2007 flight information. The position is not the same as the April 2006 material involving Duncan Larcombe, where the language of the correspondence much more readily supports an inference that Mr Larcombe had specifically tasked Mr Behr to obtain flight details. In relation to the 7 December 2007 email, there is no equivalent email from Ms English commissioning the work. The non-availability of contemporaneous emails from

this period is a result of the routine deletion of emails in accordance with Associated's document retention policy. It is not possible to draw an inference as to what the documents would have shown; to do so would simply be guesswork.

(3) Third, there is no payment record which ties Mr Behr to this Article. The only identified payment document from the period is the £200 petty-cash slip marked "*Money for Chelsy tip*", and Ms English's evidence was that this could have been a payment to a student source at Leeds University; whereas her evidence about Mr Behr was that, when he was used, he was generally engaged on a dayrate basis. I would reject the suggestion that the £200 cash entry, if it related to this story at all, represented payment to Mr Behr. On the evidence, that is not how he was paid.

(4) Finally, and importantly, Ms English's evidence was that she did not commission Mr Behr to provide flight information of this character.

1192. I also consider it more likely than not that Ms English did not read the 7 December 2007 email at the time. If she had done so, I think she would probably have remembered it, not only because it was markedly different from the kind of information which, on her evidence, she asked Mr Behr to obtain, but because it would have cast real doubt on the line being taken in the Article that Prince Harry and Ms Davy were flying away together on holiday "*this weekend*". Had she read the email, I think it likely that she would have sought clarification from the university sources as to whether Ms Davy was in fact going home to Durban at the end of term or was travelling away with Prince Harry. That she appears not to have done so supports the conclusion that she did not read the email.

1193. It is also possible that Mr Behr sent the email in response to some more general enquiry from Ms English, possibly prompted by what she had heard from her Leeds University contacts, as to whether his contacts knew anything further. But even if that were so, it would not follow that Ms English commissioned the obtaining of the precise flight information contained in the email. On that footing, the unlawful step would have been Mr Behr's own decision, apparently by improper means, to obtain Ms Davy's detailed flight data in answer to a general journalistic enquiry. It equally could have been commissioned by Mr Larcombe as he had done in 2006. On the evidence before me, I am not satisfied that any such unlawful obtaining was specifically requested or authorised by Ms English, still less that it was something for which Associated is responsible.

1194. Most significantly, I have found Ms English to be an honest witness and my conclusions on her evidence and her relationship with Mr Behr are set out in Appendix 2 (see [A2.267]-[A2.283]). Although her recollection was limited and although her inability fully to explain the Behr email weakens her position, I am not persuaded that the Claimant's case in relation to this Article is sufficiently strong to justify a finding that her denials on this issue were false.

1195. Standing back, therefore, I conclude that the Behr email plainly raises a prima facie case that unlawfully obtained flight data concerning Ms Davy was sent to Ms English. But that is not enough. The issue is whether Prince Harry has proved, on the balance of probabilities, that the information published in the Article was sourced through or

utilised UIG. In the particular circumstances of this Article, I am not satisfied that he has done so. The published piece is a short relationship article, not a travel-intelligence piece; the flight data itself points in a somewhat different direction from the holiday story as published; there remains a realistic alternative explanation in the form of muddled or conflated information from Leeds University contacts combined with material already in the public domain; and I am not satisfied that any apparently unlawful obtaining of the detailed flight information by Mr Behr was commissioned by Ms English or was otherwise something for which Associated is responsible. I have accepted her evidence on this point.

1196. In those circumstances, despite the suspicions arising from the Behr email, I am not satisfied on the balance of probabilities that Prince Harry has demonstrated UIG, for which Associated is responsible, in connection with this Article. The claim in respect of this Article therefore fails.

(48) *"Is Arun already tired of being Mr Liz Hurley"*: *Daily Mail* 16 March 2009 (Richard Simpson)

1197. This is the fourteenth Article relied upon by Ms Hurley in her claim.

1198. This Article, written by Richard Simpson and published in the *Daily Mail* on 16 March 2009, reported that there were strains in the marriage between Ms Hurley and Arun Nayar. It developed an earlier item in the *Sunday Telegraph* ("*Pals worry for busy Liz*", 8 March 2009), which had reported rumours that all might not be well in the relationship and noted that Ms Hurley's spokesman had made no effort to deny the claims.

1199. The Article went beyond the *Sunday Telegraph* item. As Mr Simpson accepted in cross-examination, it contained additional detail not found in the earlier report, including that Mr Nayar had become tired of Ms Hurley's supposed "*obsession*" with a reality television project, found aspects of her business interests tedious, and that there was friction connected with Hugh Grant. The Article was accompanied by a photograph of Ms Hurley and Mr Nayar leaving a party at the Dorchester on the Saturday night before publication.

1200. The information alleged to have been obtained through unlawful acts is "*Information relating to the Claimant's relationship with Arun Nayar, including his thoughts and feelings*". Ms Hurley's pleaded case is that a cash payment of £1,100, recorded on or around 23 April 2009 in Mr Simpson's name, was for UIG in connection with this Article..

(a) The issues

1201. The issues that arise in relation to this article are: (1) whether Ms Hurley has proved that the information in the Article was obtained by UIG, in particular voicemail interception or blagging; (2) whether Mr Simpson's evidence that the article was sourced from a confidential source should be accepted; and (3) whether either the cash-book entry for £1,100, dated 23 April 2009, taken with the other evidence relating to this Article demonstrates that the Article, or information for it, was procured by unlawful means.

(b) The evidence

1202. Ms Hurley dealt with this Article in her second witness statement. Her evidence was not challenged in cross-examination. I accept, therefore, that the information in the Article concerned matters that were private to Ms Hurley. That, however, does not answer the separate question whether the information was obtained by unlawful means.

1203. Mr Simpson's evidence was that he refreshed his memory from the Article itself and from the earlier *Sunday Telegraph* piece, of 8 March 2009, and that the latter "*jogged [his] memory considerably*". He said that article had triggered him to look into the state of Ms Hurley's relationship with Mr Nayar, and that he then approached a person identified as "EH14-A", whom he described as a socialite, a regular provider of showbusiness stories, and a "*professional story getter*".

1204. Mr Simpson said that EH14-A was the source of the detailed material in the Article. He said that he had no other relevant Arun or Liz contacts and that the quotations in the Article "*sound like [EH14-A] too*". He explained that, after the *Sunday Telegraph* item, he would have asked EH14-A, in general terms, to find out what was happening in the relationship, both to obtain more detail and to stand up the earlier story. He identified, in particular, the details about Mr Nayar's frustration with Ms Hurley's showbusiness commitments, the reality-show/organic farm idea, and his irritation about Hugh Grant, as the sort of material that would have come from that source.

1205. In his second witness statement, Mr Simpson clarified the status of EH14-A. He said that EH14-A was a confidential source, with whom he had a longstanding relationship, and that what he had meant by describing the source as a "*regular contributor*" and "*professional story getter*" was that EH14-A was often paid for tips or for finding out further information, but always on a confidential basis.

1206. Mr Simpson also said that, when he spoke recently to EH14-A while preparing his first statement, the source could not recall this particular story but thought it very likely that s/he had been the source because they had worked on so many stories about Ms Hurley and Mr Nayar. EH14-A said that the information would likely have been obtained by speaking to one or more contacts who were close to Ms Hurley and/or Mr Nayar; that EH14-A had three such contacts; and that the method used was old-fashioned talking to people, not hacking.

1207. In cross-examination, Mr Simpson maintained that the Article had indeed been "*worked on*" by himself and his source. He accepted that the Article contained material that had not appeared elsewhere, but said that this additional detail came from the confidential source. When it was suggested to him that the true source was instead a cash-paid intermediary who had obtained information unlawfully, he rejected that suggestion in clear terms: "*that's just not true*"; "*It's a fabrication of yours*"; and "*I know who the source was on the Hurley story … I couldn't be more certain really who the source was, and I know that we didn't pay him in cash*".

1208. Mr Simpson was also asked about the cash-book entry, dated 23 April 2009, recording "*£1,100 Richard Simpson payments for showbiz stories*". In his witness statement, he said that he did not remember what that payment or payments was for, but did not think it related to the source for this Article, because he did not normally pay that contact in cash and could think of no reason why this article would have been dealt with

in that way. He added that the entry could have related to any number of stories, given the volume of work on which he was engaged at the time.

1209. In cross-examination, Mr Simpson accepted that the wording of the cash-book entry was consistent with multiple payments and multiple stories, but repeatedly maintained that he had no memory of what it related to. When it was specifically put to him that these cash payments were for information obtained through voicemail interception or blagging, and that they included this Article, he rejected that allegation. He said that the source for this Article "*wasn't paid in cash, he was paid through the books*".

1210. Mr Simpson was then taken to further accounting entries. His evidence there was that he was not sure whether any of the entries related to this Article; that one of the larger payments might have been for the photograph taken at the Dorchester; and that any of the entries might equally have related to follow-up stories rather than this Article itself. In cross-examination, once the departmental coding had been explained, Mr Simpson accepted that only one entry was referable to the showbusiness department and that no source payment for EH14-A could be isolated from the records shown to him. But he explained that the source was someone he used for many different stories and would be paid well, not necessarily immediately, and sometimes by a payment made later in the month.

(c) The parties' submissions

1211. The Claimants submit that the Article contained private and unpublished detail; that Mr Simpson's explanation of legitimate sourcing was unsupported by any identifiable payment record; and that the cash-book entry for £1,100, read together with the absence of a specific contributor payment for EH14-A, shows that the Article was, in truth, sourced through a third party who was being paid in cash for UIG, namely voicemail interception or blagging. They rely in particular on the fact that Mr Simpson was eventually forced to accept that the £1,100 entry referred to multiple payments for multiple stories, and on their submission that those payments included this Article.

1212. Associated submits that the Claimants' case is not made out. They rely on Mr Simpson's evidence that he had a confidential source, that the source for this Article was not paid in cash, and that there is no evidential basis for the allegation that the £1,100 payment was for voicemail interception or blagging. They further submit that the inability to isolate a payment in the accounting records is unsurprising, given Mr Simpson's evidence that the source was used for multiple stories and might be paid later or by aggregated payments.

(d) Discussion and conclusion

1213. I accept Mr Simpson's evidence that he had a source for this Article and that the source was EH14-A. His account was internally coherent and was not materially undermined in cross-examination. The conclusion is supported, in particular, by the following matters:

(1) his evidence as to the trigger for the story – the *Sunday Telegraph* item of 8 March 2009 – was specific and plausible;

(2) his explanation that the Article was then developed by obtaining further detail from a well-connected social source fits the nature of the Article as a more detailed follow-up to an already circulating rumour;

(3) when challenged directly with the suggestion that the true source was a cash-paid intermediary engaging in unlawful activity, his denial was immediate and emphatic; and

(4) his second witness statement clarified, rather than contradicted, the position regarding EH14-A, namely that this person was a confidential source notwithstanding that they were a regular paid provider of information.

1214. I also accept Mr Simpson's evidence that the £1,100 cash-book entry does not relate to any voicemail interception or blagging. The entry does not identify the payee. It does not identify any specific story. It is consistent on its face with multiple payments for multiple stories. Mr Simpson had no memory of what it related to, but he did say – and I accept – that EH14-A was not normally paid in cash and that he could think of no reason why this Article would have been dealt with in that fashion. The Claimants' submission that the entry must have included this Article, and must therefore have represented payment for UIG, is an inference for which the evidence does not provide a sufficient foundation.

1215. The same is true of the accounting entries. Mr Simpson quite properly accepted that no payment shown to him could be identified as a payment to EH14-A for this Article. But that does not advance the Claimants' case very far. It does not follow that, because a payment cannot now be isolated, the source did not exist or that the Article was supplied by some different intermediary using unlawful methods. Mr Simpson's explanation – that this was a source used across many stories and who might be paid later and by aggregated sums – was not inherently improbable.

1216. Ms Hurley's evidence that the information in the Article was private was not challenged, and I accept it. But privacy of subject matter does not by itself demonstrate unlawful acquisition. Here there was already public speculation about difficulties in the relationship following the *Sunday Telegraph* article, and Mr Simpson's accepted evidence was that he then sought, and obtained, further information from a source with relevant social contacts close to Ms Hurley and/or Mr Nayar. That is a sufficient and legitimate explanation for the Article.

1217. I therefore reject the allegation that this Article was the product of any UIG. In particular, I reject the claim that the £1,100 payment was for voicemail interception or blagging in connection with this Article. I accept Mr Simpson's evidence that he had a source for the Article, that the source was paid lawfully, and that the story was not sourced through a cash-paid intermediary engaging in unlawful activity.

1218. The claim in respect of this Article accordingly fails.

(49) *"Sick Elton cancels more tour dates"*: *Daily Mail* 2 November 2009 (Richard Simpson & Ben Todd)

1219. This is the fifth Article relied upon by Sir Elton and Mr Furnish in their claim.

1220. The Article was published in the *Daily Mail*, on 2 November 2009, and was bylined to Richard Simpson and Ben Todd. The information alleged to have been obtained through unlawful acts is pleaded as "*Sir Elton's medical information. Details of consequential professional plans*".

1221. The Article reported that Sir Elton John had been forced to cancel a number of concerts after contracting E. coli and influenza. It stated that he had already pulled out of concerts in Dublin, London, Liverpool, Newcastle and Sheffield, and that further concerts in Seattle, Washington and Portland, Oregon had been postponed after he was admitted to hospital. It referred to a statement on Sir Elton's website saying that he was being treated for E. coli and flu. It then added that it was understood that he had undergone "*a series of blood tests, X-rays and scans to find out why his illness has proved so debilitating*". It also referred to a spokesman saying that he was recovering from serious influenza with minor complications, and to a source saying that "*the feeling is Elton will be out of action for four weeks*" and that his voice had temporarily gone.

1222. The pleaded case did not identify any specific unlawful act in relation to this Article. Instead, the Re-Re-Re-Amended Particulars of Claim relied on two payments: first, an entry in the *Daily Mail* cashbook, for the week 9 to 15 November 2009, with the description "*Elton John/David Furrush (sic) tip & info*"; and secondly, a record of a payment of £64.30, on or around 4 November 2009, with the description "… *EXES ELTON JOHN HOSPITAL W*". The pleaded allegation therefore began as one based on inference from these payment records rather than on any identified mechanism of UIG or allegation against any particular journalist.

(a) The issues

1223. The issues arising in relation to this Article are: (1) whether the Claimants have proved, on the balance of probabilities, that the information in the Article was obtained by UIG; (2) whether the two payments relied upon in the pleading, whether individually or together, support that inference; (3) what significance, if any, should be attached to the subsequent evolution of the Claimants' case; and (4) whether Mr Simpson's evidence as to the likely sourcing of the Article should be accepted.

(b) The evidence

1224. Mr Furnish addressed this Article in his witness evidence. In cross-examination he accepted that material on Sir Elton John's website, together with later reporting and statements from Sir Elton John's spokesman, pre-dated the Article; but he made clear that the part which caused concern was the more specific detail about treatment inside hospital, namely the reference to a series of blood tests, x-rays and scans. He described that as the "*specific detail*" which "*was surprising to us and caused concern*". In re-examination he confirmed that this was not information that he, or anyone on his behalf, had given to the *Daily Mail*.

1225. Sir Elton John likewise accepted, in cross-examination, that the Article was reporting, at least in part, on a public statement on his own website and on further reporting of that statement, together with statements from his spokesman, Gary Farrow. But he said that the information in the Article was wrong in material respects, including as to the precise medical condition, and that what concerned him was the private detail about his treatment. He later confirmed, in re-examination, that the information that he had

undergone a series of blood tests, x-rays and scans to find out why his illness had proved so debilitating was not information he had authorised to be disclosed to the *Daily Mail*.

1226. Mr Simpson dealt with this Article in his first witness statement. His evidence was that his role on the story was limited. He said he had no memory of any payment said to relate to it and that his work on the Article was confined to writing up what had already been reported in the previous day's Sunday newspapers, together with the Press Association wire copy and the statement on Sir Elton John's website. He said that he was not involved in obtaining any medical information unlawfully. He added that it was possible that Ben Todd might have paid Gary Farrow for guidance on the story, because PRs would sometimes be paid for stories, although he could not remember the payment itself and said it could equally have related to another story entirely. He also said that he had no reason to think that Mr Todd had obtained any information unlawfully.

1227. In his oral evidence, Mr Simpson amplified that account. He said that his job that day was to rewrite the four previous newspaper articles, the Press Association copy and the website statement, and that anything additional would, he strongly suspected, have come from Ben Todd's conversation with Gary Farrow, who was Sir Elton John's spokesman and publicist and, as he understood it, a good friend of Mr Todd. He said that, if Mr Todd had spoken to Mr Farrow, it would likely have been not to confirm the basic story, which had already been publicly reported, but to obtain some off-the-record guidance or further background to put more flesh on the bones of it. He accepted that that was speculation, but it was his evidence as to the likely sourcing.

1228. Mr Simpson was also taken in cross-examination to the payment records. As to the payment record with the description "*EXES ELTON JOHN HOSPITAL W*", he accepted he had no memory of the payment but said that, if he were to speculate, it seemed more likely to relate to someone being at the hospital, perhaps a photographer or follow-up work, rather than to the sourcing of the Article itself. He was explicit that this was speculation only.

1229. As to the cashbook entry "*Elton John/David Furrush (sic) tip & info*", Mr Simpson again said that he had no recollection of it. When it was put to him that this might relate to Mr Todd paying Gary Farrow, he accepted no more than that this was a possibility, and repeatedly emphasised that he was speculating. He was not aware of Mr Todd having paid Mr Farrow, but his evidence was that, once the story had broken publicly, it was entirely plausible that Mr Todd might have contacted Mr Farrow for off-the-record guidance on it.

1230. There was also evidence, more generally, about Gary Farrow's relationship with the press. Nicole Lampert's evidence was that Mr Farrow often gave unauthorised information and, when it was put to her that he would not have revealed information Sir Elton and Mr Furnish would not want made public, she answered, "*that doesn't always matter*". Charlotte Griffiths said that she was friendly with Mr Farrow and did not always identify him in articles, partly to protect him. In Sir Elton John's oral evidence, in relation to a different article, he referred sarcastically to "*the wonderful Mr Farrow*" and said that Mr Farrow no longer worked for them because of information he had revealed to journalists.

(c) The parties' submissions

1231. The Claimants submit that the Article contained private medical detail which went beyond anything publicly stated on Sir Elton John's website or in other press reports. They rely on the two payments identified in the pleading, on the absence of any witness evidence from Ben Todd, and on what they submit to be the significance of Mr Simpson's use of ELI/BDI in other contexts. In that regard, they submit that Mr Simpson's credibility was diminished by the way in which his evidence about ELI developed in cross-examination: that, although in his witness statement he described his use of ELI as "*very infrequent*" and said that he did not remember using ELI for anything other than numbers or addresses, in oral evidence he accepted that some of the numbers obtained were ex-directory or mobile numbers, accepted that he had not, at the time, given thought to how such information was being obtained, and was unable to explain with any specificity a number of historic ELI-related payments. They submit that these matters support the inference that Mr Simpson used ELI for UIG and that the same is capable of bearing on the sourcing of this Article.

1232. In closing submissions, the Claimants further submit that the Court should conclude that the Article contained information unlawfully obtained by a private investigator commissioned by Mr Todd or Mr Simpson. That marked a distinct shift from the pleaded case, which did not specify any particular UIG and instead relied only on the two payments.

1233. Associated submit that the Article was a follow-on from material already in the public domain, namely the website statement, the Press Association copy and the previous newspaper reports. They rely on Mr Simpson's evidence that his own role was confined to writing up that material and that anything additional likely came, if at all, from Ben Todd obtaining guidance from Gary Farrow. They submit that the two payments do not establish UIG, that no allegation of commissioning a private investigator was put to Mr Simpson, and that it is not open to the Claimants now to advance an unpleaded case that Mr Todd was guilty of UIG.

(d) Discussion and conclusion

1234. I accept that the Article contained some information of a private medical character. In particular, I accept the evidence of Mr Furnish and Sir Elton John that the statement that Sir Elton John had undergone a series of blood tests, x-rays and scans was not information they had publicly authorised to be given to the *Daily Mail*. But, on its own, that does not answer the question I must decide. The issue is whether the Claimants have proved, on the balance of probabilities, that the information in the Article was obtained by UIG.

1235. In my judgment, they have not done so. The starting point is the pleading. No specific UIG was alleged in the Re-Re-Re-Amended Particulars of Claim in relation to this Article. The pleaded case relied only on the two payments. The later suggestion, reflected in the trial matrix and now advanced more broadly in closing, that the information was unlawfully obtained by a private investigator commissioned by Mr Simpson and/or Mr Todd, is a material shift. In particular, it is not open to the Claimants to pursue a positive case that Mr Todd himself engaged in UIG, or commissioned it, where no such allegation was pleaded against him (see [59]-[62] above). The failure to plead any allegation of UIG also means that it would not be right

to draw any adverse inference from the fact that Associated called no evidence from Mr Todd.

1236. Nor does the evidence fill that gap. The two payments relied upon in the pleading do not, either separately or together, establish UIG. The cashbook entry "*Elton John/David Furrush tip & info*" is vague. It does not identify the recipient, the nature of the information, or whether it related to this Article at all. The payment record entry "*EXES ELTON JOHN HOSPITAL W*" is equally equivocal. It is perfectly capable of referring to follow-up work, expenses or activity at the hospital after the Article had been written. Mr Simpson could not remember either payment, and his evidence on them went no further than careful speculation. That is insufficient to discharge the Claimants' burden of proof.

1237. I also reject the Claimants' attempt to derive support for their case on this Article from Mr Simpson's historic use of ELI/BDI. I have dealt with Mr Simpson's evidence on that subject in Appendix 2 (see [A2.296]-[A2.300]). As I explain there, I found Mr Simpson to be a credible and generally reliable witness. He made appropriate concessions, recognised the limits of his recollection, and did not seek to construct a narrative beyond what he could properly support. I accept his evidence as to his use of ELI/BDI, namely that he used such agencies infrequently and for the limited purpose of obtaining telephone numbers and addresses under time pressure, and that there is no sufficient evidential basis upon which I could properly conclude that he knowingly procured, instructed or participated in UIG through ELI/BDI. In those circumstances, the matters relied upon by the Claimants in relation to ELI/BDI do not provide any proper basis for inferring that Mr Simpson used UIG in relation to this Article, still less that the information in it was unlawfully obtained.

1238. I accept Mr Simpson's evidence as to the likely sourcing of the Article. His account was that his own contribution was limited to writing up material already publicly available in the Sunday newspapers, the Press Association wire copy and the website statement, and that anything additional likely came, if at all, from Mr Todd obtaining guidance from Gary Farrow. That evidence was not materially undermined. It is true that he could not speak with certainty about what Mr Todd did, and it would be wrong to make any positive finding based on his speculation alone. But the same point cuts both ways: if it is not possible to make a firm finding that Mr Farrow was the source, it is equally not possible to exclude that possibility, especially in light of the evidence that Mr Farrow did at times give unauthorised information to journalists and later left on poor terms because of information he had revealed. The Court has no evidence from Mr Farrow.

1239. Although relied upon by the Claimants to support their allegations of UIG against Mr Simpson, I attach no weight to the evidence of Timur Moon (see [A2.526]-[A2.528]).

1240. In those circumstances, the Claimants' case falls short. This is not a case in which the Court can properly conclude that UIG has been proved by inference. There is a legitimate and realistic possible source pathway, namely public reporting supplemented by guidance from Gary Farrow. I make no firm finding that Mr Farrow was in fact the source of the additional detail; the evidence does not permit that. But the existence of that plausible route means that the Court cannot be satisfied, on the balance of probabilities, that the additional information must have come from UIG. Nor do I accept

that the Claimants can bridge that evidential gap by relying on a generalised propensity argument drawn from Mr Simpson's past use of ELI/BDI. The burden of proving UIG rests on the Claimants, and they have not discharged it.

1241. I therefore reject the claim in respect of this Article. I accept Mr Simpson's evidence as to the likely sourcing of the story. I am not satisfied that either of the two pleaded payments represented payment for UIG, still less that the information in the Article was obtained by a private investigator commissioned by Mr Simpson or Mr Todd. The Claimants have failed to prove UIG in connection with this Article.

(50) "*Harry moves in with Chelsy*": *Mail on Sunday* 24 January 2010 (Katie Nicholl)

1242. This is the twelfth Article relied upon by Prince Harry in his claim.

1243. The Article was published in the *Mail on Sunday*, on 24 January 2010, and was bylined to Katie Nicholl. The information alleged to have been obtained through unlawful acts is information as to Prince Harry's relationship with Chelsy Davy, including as to their plans and feelings. The original pleaded case did not identify any specific unlawful act in relation to this Article.

1244. The Article reported that Prince Harry had effectively moved into Chelsy Davy's Belgravia flat for weekend visits while training in Hampshire during the week. It stated that she had given him keys to the flat; that his Royal Protection Officers were permitted to stay there; that he used the flat as his weekend base; that he stayed there regularly before she left the United Kingdom at Christmas; and that the couple were serious, in love, and discussing their future, while stopping short of engagement. It also contained background material about their recent reconciliation, Chelsy Davy's plans, and a Facebook message said to have been posted by Prince Harry.

(a) The issues

1245. The issues arising in relation to this Article are: (1) whether Prince Harry has proved, on the balance of probabilities, that the information in the Article was obtained by UIG; (2) what significance, if any, should be attached to the fact that the original pleaded case identified no specific unlawful act; (3) whether the challenge to Katie Nicholl's notebook evidence supports the later allegation of voicemail interception advanced at trial; and (4) whether Katie Nicholl's evidence as to the likely sourcing of the Article should be accepted.

(b) The evidence

1246. Prince Harry addressed this Article in his second witness statement. He said that it concerned his relationship with Chelsy Davy, including their plans and feelings, and described the detail in the Article as "*staggering and truly alarming*", giving rise not only to privacy concerns but also to "*serious security concerns*" because of the details of sleeping location and the suggestion that he would be seen more at her apartment than at Clarence House. He said that the Article disclosed a large amount of personal information which, in his view, could only have been obtained through unlawful means, such as surveillance.

1247. Katie Nicholl dealt with the Article in her first witness statement. Her evidence was that, after reviewing her notebooks, it was likely that the information came either from Garth Gibbs, who had passed it on from a confidential source, or directly from that confidential source, namely a friend of Chelsy Davy in South Africa who was close to her and had previously provided accurate information. She said that a page of her notebook referred to the same core information as appeared in the Article, including Prince Harry staying with Chelsy Davy, the position of the protection officers, and the use of spare bedrooms, and that the presence of the initial "J" in the margin made her very confident that the source was that South African contact. She further said that she would likely have run the story past some of her other confidential sources on Prince Harry and Chelsy Davy to confirm that it was true and to obtain extra detail, and that she would also have checked press cuttings because their on-and-off relationship was a constant story in the news.

1248. Ms Nicholl also gave evidence about Facebook material. In her witness statement, she said that she knew several people who were "*friends*" with Prince Harry on Facebook and that she had been shown screenshots of some of his posts and messages. In oral evidence, she explained this in more qualified terms. She said that she was not sure she could now clearly recall exactly what she had seen, but that the contact identified by the initial "*J*", whom she described as a very close friend of Chelsy Davy, would sometimes send her screenshots from Chelsy Davy's Facebook page and Prince Harry's Facebook page and give her information obtained from there. She accepted that she had no record of any such screenshots and had not kept them. She said, however, that she did not have everything spanning her career and that not all material of that kind had been retained.

1249. In cross-examination, Katie Nicholl was taken to the notebook entry and accepted that it did not itself contain a number of details which appeared in the published Article, including the assertion that Prince Harry was staying at the flat every weekend, that Chelsy Davy had given him keys, and that the protection officers were staying in London. She explained, however, that not everything she was told was necessarily recorded in a single notebook entry, that she did not have all of her notes spanning her career, and that she was clear that the source identified by the initial "*J*" was the source of the information. She also said that the contact was a very close friend of Chelsy Davy in South Africa, who would sometimes send screenshots from Facebook pages, but that the key source of the information was Chelsy Davy directly to that friend. It was put to her that the "*missing*" information must therefore have come from voicemail interception. Ms Nicholl denied that categorically and said that she had never intercepted voicemail and had never instructed anyone to do so.

(c) The parties' submissions

1250. Prince Harry submits that the Article contained highly private and security-sensitive information about his living arrangements, movements and relationship with Chelsy Davy. He relies on his own evidence as to the private and restricted nature of the information, and submits that Katie Nicholl's account of sourcing was not credible because her notebook did not contain several of the central details that appeared in the Article, including the references to weekend stays, keys, and the position of the protection officers. Prince Harry also submits that Ms Nicholl's written evidence that she had been shown screenshots of Prince Harry's Facebook posts and messages was qualified in oral evidence, that there is no surviving documentary record of any such

screenshots, and that her suggestion that there may have been other notes was not credible. On that basis, Prince Harry invites the Court to infer that the information was obtained by UIG, including voicemail interception.

1251. Associated submit that this claim fails at the threshold because no specific allegation of UIG was pleaded in relation to this Article. They rely on Katie Nicholl's evidence that the information came from the same South African source who was close friends with Chelsy Davy, and submit that the presence of the initial "*J*" in the notebook supports that account. They further rely on her evidence that she would likely have run the story past other confidential sources and checked cuttings concerning the couple's on-and-off relationship. Associated submit that the only real challenge advanced at trial was that not all the information in the Article appeared in the notebook, but that this, without more, is not probative of voicemail interception, particularly given the obvious fact that notebook entries are not verbatim transcripts and that articles may build on notes taken in one or more conversations, or through later checking during the writing process. Associated therefore submit that the allegation of voicemail interception was unevidenced, unpleaded, and should be rejected.

(d) Discussion and conclusion

1252. I accept that the Article contained information of a private character and that some of it was capable of giving rise to legitimate concern on the part of Prince Harry, particularly because it referred to his use of Chelsy Davy's flat, to sleeping arrangements there, and to the presence of protection officers. I also accept that Prince Harry regarded the publication of that detail as intrusive and as raising security concerns. But that is not the question I must decide. The question is whether he has proved, on the balance of probabilities, that the information in the Article was obtained by UIG.

1253. In my judgment, he has not done so. The starting point is the pleaded case. No specific unlawful act was pleaded in relation to this Article. The allegation of voicemail interception emerged only at trial, and it was a serious allegation. There was no evidential foundation for it beyond the point that some of the information in the published Article was not recorded in the particular notebook entry to which Katie Nicholl was taken in cross-examination. That is not, in my judgment, a proper basis upon which either to allege or to infer voicemail interception.

1254. I accept Katie Nicholl's evidence as to the likely sourcing of this Article. Her account was that the information came from the same South African source, close friends with Chelsy Davy, who had previously given her reliable information, and that her belief in that regard was reinforced by the initial "*J*" in her notebook. She also explained that she would likely have spoken to other confidential sources in order to confirm the story and obtain further detail, and that she would have checked cuttings because the relationship between Prince Harry and Chelsy Davy was regularly covered in the press. That is a coherent and perfectly plausible account of how the story was put together.

1255. I also accept Associated's submission that the fact that not all the information in the Article is recorded in the notebook entry is, by itself, not probative of voicemail interception. It is obvious from reading Katie Nicholl's notebooks, and from her oral evidence about them, that they were not intended to be verbatim transcripts of every conversation and that not every detail she was told was necessarily written down in one place. That is not surprising. Nor is it surprising that a published article would build on

the contents of a notebook entry, whether because the journalist had more than one conversation with a source, because she obtained additional confirmation from another source, or because she supplemented the story with background material from cuttings during the writing process.

1256. I reject the allegation that Katie Nicholl obtained information for this Article by voicemail interception. She denied that allegation in clear and unequivocal terms. There is no evidence that she intercepted voicemails, or instructed anyone else to do so, in relation to this Article. Nor is there evidence capable of supporting the broader submission that the "*missing*" elements of the Article must therefore have been the product of UIG. Prince Harry's case on this Article depends on that inference, and I am not prepared to draw it.

1257. Standing back, Prince Harry has failed to prove UIG in relation to this Article. The private nature of some of the information, and his understandable concern about its publication, do not suffice to establish unlawful procurement. There is a legitimate and realistic source pathway, namely information from a close South African friend of Chelsy Davy, reinforced and developed through other confidential contacts and press cuttings. The existence of that plausible route means that the Court cannot be satisfied, on the balance of probabilities, that the information in the Article was obtained by UIG.

1258. I therefore reject the claim in respect of this Article. For the reasons I have given, I am not satisfied that Prince Harry has proved that the information in the Article was obtained by UIG.

(51) "*Elton: I'm the Daddy*": *Daily Mail* 30 December 2010 (Ben Todd & Dave Gardner)

1259. This is the sixth Article relied upon by Sir Elton and Mr Furnish in their claim.

1260. The Article was published, on 30 December 2010, under the bylines of Ben Todd and David Gardner. It reported the birth, by surrogacy, of Sir Elton and Mr Furnish's first child, Zachary Jackson Levon Furnish-John. It stated that an official at the Los Angeles local registrar's office had confirmed that Sir Elton was listed as the father and Mr Furnish as the mother in the relevant records; that the child had been born at Cedars Sinai Medical Centre in Beverly Hills on Christmas Day; and that the birth had not yet been formally registered on a certificate. The Article also included material about Californian surrogacy arrangements, fertility practice, and the couple's publicly stated joy at the birth of their son.

(a) The issues

1261. The issue is whether the Claimants have proved, on the balance of probabilities, that information in this Article was obtained by UIG. There is now no specific pleaded allegation of UIG in relation to this Article. The earlier pleaded case that Associated had made a payment for the Claimants' child's birth records, and that such information could not lawfully have been obtained, was withdrawn by the Claimants, and the relevant allegation was struck out.

1262. At trial, however, a different case was advanced. Relying principally upon the contemporaneous email exchange between Mr Gardner and Mr Todd, on 29 December 2010, the Claimants submitted that the information had in reality been obtained by

deception. They argued that it was inherently implausible that an official in the Los Angeles registrar's office would have provided the relevant information over the telephone to a journalist before a birth certificate had even been issued.

1263. The question, therefore, is whether the Court should infer that Mr Gardner's email account of how he obtained the information was a deliberate falsehood, concealing some unidentified deception or other form of UIG, or whether the straightforward explanation given in the contemporaneous documents and in Mr Gardner's hearsay evidence is to be preferred.

(b) The evidence

1264. In his witness statement, Mr Furnish relied on this Article as one of the examples supporting the allegation that the Mail had stolen and exploited private information surrounding the birth of Zachary and the surrogacy process. He described the process of having a surrogate carry their child as "*incredibly private*" and said that their overriding concern had been to protect the surrogate's privacy. He said that the world had no idea they were having a baby, that they had arranged for the surrogate to travel from Northern California to Los Angeles to protect her identity, and that, before Zachary was born, they had obtained a court order so that the surrogate's name would not appear on the birth certificate and Mr Furnish's would be substituted.

1265. Mr Furnish said that he and Sir Elton later needed a copy of Zachary's birth certificate to obtain a US passport, but that, to their shock, the Mail had obtained a copy of the birth certificate before they did. He said that they found that deeply disturbing and upsetting.

1266. In cross-examination, both Mr Furnish and Sir Elton were taken to the fact that they had themselves announced Zachary's birth through *Us Weekly*, on 28 December 2010, and that a press release had also been issued by the Center for Surrogate Parenting. Sir Elton accepted that a certain amount of information concerning the birth had already entered the public domain before the Article, although he maintained that the Claimants had kept the matter extremely private and felt that an injustice had been done to them.

1267. Associated served a hearsay notice in respect of David Gardner's witness statement (see [A2.576]). Mr Gardner did not attend trial – he resides abroad – and so his evidence was not tested in cross-examination. His evidence was given in a witness statement verified by a statement of truth.

1268. Mr Gardner said that he initially did not remember all the details of the story, but that he located the emails associated with it and refreshed his memory from them. He recalled working on the Article with Ben Todd. On 28 December 2010, Sam Greenhill asked him to prepare an outline of the law in California relating to surrogacy, which he did.

1269. Mr Gardner also said that he spoke to a fertility expert who told him that, on a birth certificate, the partner listed as the father is usually the person who provided the sperm.

1270. Mr Gardner said that Ben Todd then asked him to get the child's birth certificate. He explained that birth certificates were publicly available in Los Angeles; that he called the Births, Deaths and Marriages registry in Los Angeles; that he did not have a

specific contact there but rang the general number; that in Los Angeles, if there was a celebrity divorce, marriage or baby, he was often asked to search Births, Deaths and Marriages; that he would either go there in person and ask to see the publicly available record or telephone up; and that birth certificates were public records and would be given out if requested. He added that anyone could request what was referred to as an "*informational copy*" of a birth certificate in California, subject to an administrative fee if a physical copy was sought.

1271. Mr Gardner then said that, on 29 December 2010, he called the registry and spoke to someone who said that the birth certificate was not yet available, because it was just after Christmas, and the details were only recorded in the computer system. He said that he would have introduced himself as a journalist because, as a matter of practice, he always did so. He then said that the official read out the details recorded in the file, including the child's full name, sex, the date and place of birth, and the parents' names. As the information was given to him by phone, and he did not obtain a physical copy, he did not pay for it. Finally, he said that he sent those details to Ben Todd, who wrote the story.

1272. There was contemporaneous email correspondence dated 29 December 2010 between Mr Gardner and Mr Todd. In an email, timed at 18:06, Mr Gardner wrote to Mr Todd:

> "An official at the Los Angeles Local Registrar's office confirmed that Zachary Jackson Levon Furnish-John was born at Cedars Sinai Medical Centre in Beverly Hills on Christmas Day. Elton John is listed as the father and David James Furnish is listed as the mother. She didn't have any other details and said the birth had not yet been officially registered, so a certificate wasn't available. Fertility experts say the partner listed as the father is usually the one who provided the sperm".

Mr Todd replied: "*top one. and we've got this to ourselves at the mo, haven't we?*" Mr Gardner responded: "*Yes, as far as I know …*".

1273. There were also payment records. The Claimants relied on two payments on or around the same time: one, on 28 December 2010, for £95.19 described as "*California Surrogacy Law*", and another, on 29 December 2010, for £158.65 described as "*Elton John is father of the baby*".

1274. The Claimants submitted that the latter payment, in particular, corresponded in time with the provision of the birth information and reflected payment for the obtaining of that information.

(c) The parties' submissions

1275. The Claimants submitted that the information in the Article was highly private and exclusive, concerning the birth of their newborn son and details recorded at the registrar's office. They submitted that the Court should infer that Mr Gardner obtained the information by deception. They relied upon the exclusivity of the information; the payments made, on or around 28 and 29 December 2010; the contemporaneous email exchange between Mr Gardner and Mr Todd; the background propensity evidence concerning Mr Todd's use of private investigators; and the absence of oral evidence from Mr Todd and Mr Gardner.

1276. In particular, the Claimants submitted, as they had in opening, that the "*inescapable inference*" from the email exchange was that Mr Gardner had blagged the information from an official at the Los Angeles registrar's office. They argued that it was inherently implausible that a registrar would provide private information about a child over the telephone to a journalist before a birth certificate had even been issued. They submitted that Mr Gardner's later witness statement should not be preferred to the evidence of Sir Elton and Mr Furnish about the private and restricted nature of the information.

1277. Associated submitted that the claim in respect of this Article was not made out. It relied on the contemporaneous emails and Mr Gardner's hearsay evidence. It submitted that the Claimants' current case was fundamentally weakened by their withdrawal of the earlier allegation that it would have been unlawful, in itself, to obtain a copy of the child's birth certificate in the United States. It submitted that, once that proposition was abandoned, the bare fact that the information was obtained from a public registry did not support any inference of deception.

1278. Associated further submitted that the Claimants had put forward no credible evidence, whether generally or specifically, to show that information of this kind would not have been available in Los Angeles as Mr Gardner described, or that a registrar would not have provided it over the telephone to a journalist.

(d) Discussion and conclusion

1279. In my judgment, the Claimants have failed to prove that this Article was the product of UIG.

1280. I begin with the state of the pleaded case. There is now no pleaded allegation of any specific unlawful act in relation to this Article. The earlier allegation that Associated paid for the Claimants' child's birth records and that such records could not lawfully have been obtained was withdrawn, and that part of the pleaded case was struck out. The new case advanced at trial was that the information was obtained by deception. That case was not pleaded in any article-specific or particularised form.

1281. The essential difficulty with the Claimants' case is that it depends entirely upon the Court rejecting the straightforward and contemporaneously recorded explanation of how the information was obtained, and instead inferring that Mr Gardner's email was itself a dishonest fabrication concealing some unidentified deception. I do not consider that inference justified.

1282. The contemporaneous email exchange provides strong support for Mr Gardner's account. It records, on the very day in question, that an official at the Los Angeles local registrar's office confirmed the child's details; that the birth had not yet been officially registered; and that a certificate was not available. That is precisely the explanation Mr Gardner later gave in his witness statement.

1283. I bear in mind that Mr Gardner's witness statement is hearsay and that it was not tested in cross-examination. But that does not deprive it of all weight, particularly where, as here, it is materially corroborated by contemporaneous documents. The Claimants have not put forward any credible case to undermine Mr Gardner's evidence, either generally or specifically. In particular, they have not adduced evidence showing that birth information in Los Angeles was not publicly available in the way he described,

or that an official in the registry would not have provided such information over the telephone to a journalist.

1284. It is not sufficient simply to assert that such a disclosure is "*inherently implausible*". The Court requires evidence, not speculation. Once the Claimants abandoned the proposition that it was necessarily unlawful to obtain the birth record information in the United States, the foundation for the present argument was materially weakened. There is no reason, as a matter of evidence, to conclude that an official in the Los Angeles registry would necessarily have refused to provide the information knowing that Mr Gardner was a journalist, even if the formal certificate had not yet been issued and the details were only then recorded in the computer system.

1285. The payment records do not materially assist the Claimants. The 28 December payment for "*California Surrogacy Law*" is entirely consistent with Mr Gardner's evidence that he was asked to provide an outline of the Californian legal position. The 29 December payment, for "*Elton John is father of the baby*", is equally consistent with payment for journalistic work done in connection with the story or for the story itself. It is not, without more, evidence of deception or of any other UIG.

1286. Nor do I consider that the absence of oral evidence from either Mr Todd or Mr Gardner justifies the inference the Claimants seek. Mr Todd's absence may mean that there is no witness from whom further detail can be sought, but it does not establish wrongdoing. Equally, it would not be proper to draw any adverse inference from Mr Todd not giving evidence when no allegations of UIG had been made against him in the Claimants' pleaded case. As for Mr Gardner, the question is whether his hearsay evidence is supported or undermined by the rest of the material. In my view it is supported by the contemporaneous documents.

1287. Stepping back, the straightforward explanation is to be preferred. The contemporaneous emails corroborate Mr Gardner's evidence that he obtained the information by telephoning the Births, Deaths and Marriages registry in Los Angeles. To accept the Claimants' argument would require concluding that the email trail itself was a contemporaneous cover story, disguising some entirely unspecified deception. I do not regard that as a credible or evidentially supported conclusion.

1288. Drawing these matters together, this is a case in which there is now no specific pleaded allegation of UIG; the alternative case of deception was advanced at trial without a proper evidential foundation; the contemporaneous documents strongly support Mr Gardner's account; and the Claimants have not produced reliable evidence to undermine either his general evidence that birth information in Los Angeles was publicly available or his specific evidence that the registry provided the relevant information over the telephone. In those circumstances, I am not satisfied that the Claimants have discharged the burden of proving UIG. The claim based on this Article is therefore dismissed.

(52) "*Will Shane 'debacle' cost Liz her godmother dream*": *Mail on Sunday* 2 January 2011 (Katie Nicholl)

1289. This is the fifteenth Article relied upon by Ms Hurley in her claim and the seventh Article in Sir Elton and Mr Furnish's claim.

1290. The Article appeared in Katie Nicholl's diary column in the *Mail on Sunday*, on 2 January 2011. It reported that, in the aftermath of Elizabeth Hurley's highly publicised affair with Shane Warne, she feared that she would be "*snubbed*" as godmother to the newborn son of Sir Elton John and David Furnish, Zachary Furnish-John, and that the Beckhams would instead be chosen for that role. It further reported that Ms Hurley had spoken to Sir Elton John and David Furnish in California after Zachary's birth, knew that David and Victoria Beckham had been asked to be godparents, and was concerned that Sir Elton disapproved of the "*Shane debacle*". The article also referred to Ms Hurley having spoken at length to Sir Elton and Mr Furnish in the months before Zachary's arrival, and to Sir Elton and Mr Furnish being godfathers to Damian.

(a) Issues

1291. In respect of this Article, the information identified as private was, in substance, Ms Hurley's thoughts and feelings about not being asked to be godmother, together with the fact and details of private conversations between her and Sir Elton and/or Mr Furnish, and private conversations with mutual friends about the same topic.

1292. By the end of the trial, the issues arising for determination are: (i) whether the Claimants have proved that any of the information in the Article was obtained by UIG; (ii) in particular, whether they have proved that the information came from voicemail interception or any other form of unlawful activity; (iii) whether Sharon Feinstein was in fact a source for the Article and, if so, whether there is any properly pleaded and evidenced basis for concluding that she obtained information unlawfully and that Katie Nicholl knew this; and (iv) whether the marked change between an earlier draft of the story and the published Article supports an inference of UIG.

(b) The evidence

1293. The final published Article stated that Ms Hurley feared being "*snubbed*" as godmother, that she had spoken to Sir Elton and Mr Furnish in California since Zachary's birth, and that she knew the Beckhams had been asked to be godparents. It attributed the suggestion that Sir Elton was unimpressed by the "*Shane debacle*" to "*a friend*".

1294. An earlier draft of the story was materially different. It suggested that the Beckhams were being overlooked and that Ms Hurley was to be given the "*godmother crown*". It also included a reference to Ms Hurley having spoken to Sir Elton and Mr Furnish on Skype from California, and it alleged that she was one of the few close friends sworn to secrecy about Zachary's impending arrival. The draft article was located amongst Charlotte Griffiths's computer files.

1295. In her first witness statement, Katie Nicholl said that she did not remember the Article and had not identified any contemporaneous notes relating to it. She said that she had several good sources close to both Ms Hurley and to Sir Elton and Mr Furnish, and that any of them could have provided the information. She identified Veronica Blake, Sharon Feinstein, and two confidential contacts as possible contributors to the Article. In her second witness statement she also explained, in general terms, that freelancers could also provide information on a confidential basis and that not every confidential source was a freelance journalist.

1296. In cross-examination, Ms Nicholl accepted that the first draft and the published version pointed in opposite directions and that "*something happened*" which changed the story direction completely. However, she did not accept that this demonstrated the use of unlawful methods. She maintained that she did not remember the story, and her evidence was that, where stories developed, that could be because real sources got things wrong and because a story left for Charlotte Griffiths to work up might end up materially different from the original tip.

1297. Importantly, when it was put to Ms Nicholl in cross-examination that Sharon Feinstein "*did also provide you with information from voicemails*", she did not accept that. Her answer was that her understanding was that Ms Feinstein had very good sources on Ms Hurley. Nor did she say positively that Ms Feinstein had been the source for this Article: her evidence remained that Ms Feinstein was one of a number of possible sources for an Article she did not recall.

1298. In his evidence, Mr Furnish said that, when he and Sir Elton had children, he could imagine there was "*chatter*" among friends about who the godparents might be, and he suspected there was banter along the lines of "*who's going to be the godparents?*". He also said that Ms Hurley did speak to him and Sir Elton at length about Zachary.

1299. In her second witness statement, Ms Hurley also said that she spoke to Mr Furnish and Sir Elton at length about Zachary and that those conversations were long-distance telephone calls. She also said that she had "*mortifying conversations*" with Patrick Cox and Susannah Constantine about who might be godmother and whether what had happened with Shane and the publicity around it might make Sir Elton and Mr Furnish think longer about asking her to be godmother.

1300. It is also material that neither Mr Furnish nor Ms Hurley gave evidence that information of the kind published in this Article had been left in voicemail messages. Their evidence was of direct telephone conversations and of discussion among friends. To the extent that Ms Hurley expressed the view in her witness statement that the information must have come from "*bugging [her] phonelines*", that was her speculation as to possible sourcing. It was not advanced as a pleaded mechanism of UIG in relation to this Article. Nor was this Article one in respect of which the Claimants sought to allege that information had been obtained through the activities of Mr Burrows, the only person who it was alleged had intercepted live telephone calls by installing a recording device.

1301. In her witness statement, Ms Griffiths said she could see she was listed as editing the Diary that week but had no specific memory of doing so. She described what her responsibilities would have been in that role (ensuring the column was filled, coordinating stories, using team contributions and "*leftovers*" on Atex). She said she did not remember the specific story and suggested that it did not strike her as a particularly strong story. She explained that she did not regularly write about Elizabeth Hurley or Sir Elton John because they were not her "*scene*", and she identified possible routes by which the item might have reached the Diary (including, potentially, via Katie Nicholl's contacts).

1302. In cross-examination, Ms Griffiths was pressed on her lack of recollection and the provenance of specific, apparently private details in that item. She accepted she could not identify who wrote it or how it was sourced; she suggested it might have been left for her by Ms Nicholl to "*prop up the page*" while she was deputising; and she accepted

that, if the story was provided by Ms Nicholl, she would likely have taken it on trust and included it. She was taken to the earlier draft showing that a previous version of the story ran in the opposite direction, and she was unable to give a specific explanation for how or why the story changed, beyond generalised descriptions of diary workflow and rewriting.

1303. No allegation of UIG was put to Charlotte Griffiths in relation to this Article. Her evidence in relation to the draft was that it looked like a first version containing the opposite thrust, and in cross-examination she suggested that, if she had to guess, the eventual published theme could readily have come from gossip spreading through social circles: a celebrity tells friends, they tell others, and the matter makes its way into a diary column.

(c) The parties' submissions

1304. In their written closing submissions, the Claimants relied on the private and restricted nature of the subject-matter, on the significant change between the draft and the published Article, and on their wider case concerning Sharon Feinstein. Their case was, in substance, that the information was unlikely to have come from a legitimate source, that the change in direction suggested a more intrusive source had intervened, and that the true explanation was voicemail interception.

1305. Associated's written closing submissions on this Article were more detailed and addressed both the Article itself and the wider significance of the allegations made by the Claimants against Sharon Feinstein.

(1) First, Associated submitted that the Claimants' statements of case made no positive case that Ms Feinstein had obtained information by voicemail interception or any other unlawful means, or that Ms Nicholl knew that to be so, and that the allegation emerged only in cross-examination, without prior pleading or notice.

(2) Second, they submitted that it was not open to the Claimants to invite findings of unlawful information-gathering against Ms Feinstein, still less findings that Ms Nicholl knew of such alleged wrongdoing, where no such case had been properly pleaded or advanced with any particularity.

(3) Third, they emphasised that Ms Nicholl did not say positively that Ms Feinstein was the source for this Article; she identified her only as one of a number of possible contributors.

(4) Fourth, they submitted that it was never put to Ms Nicholl that she had commissioned Ms Feinstein to intercept voicemails, nor was any coherent case developed that she knew that this was how any information had been obtained.

(5) Fifth, they argued that the marked shift between the draft and the published Article was not probative of UIG: stories in diary journalism often evolve substantially before publication, particularly where a journalist receives further information from a source considered more reliable, or where earlier information turns out to be incomplete or wrong.

(6) Sixth, they submitted that there was an obvious and legitimate source pathway for the story, namely gossip and discussion among people close to Ms Hurley, Sir Elton and Mr Furnish, particularly given Mr Furnish's acceptance that friends would of course have been talking about who the godparents might be, and Ms Hurley's own evidence that she discussed the issue with Patrick Cox and Susannah Constantine.

(7) Seventh, they submitted that the evidential platform did not in any event support a voicemail case. Neither Ms Hurley nor Mr Furnish gave evidence that relevant information had been left in voicemail messages, and Mr Furnish positively accepted that friends would naturally have been talking about the godparents.

(8) Eighth, they submitted that Ms Hurley's witness-statement suggestion that the information had come from "*bugging [her] phonelines*" was itself speculative and did not assist the Claimants. It was not the pleaded mechanism of UIG for this Article and, although allegations of landline interception arose elsewhere in the litigation in relation to Mr Burrows, this was not an Article in respect of which the Claimants advanced a Burrows allegation.

(9) Finally, they submitted that the allegation of voicemail interception by Ms Feinstein was speculative, raised late, unsupported by any evidence, and should be rejected.

(d) Discussion and conclusion

1306. I am not satisfied that the Claimants have proved that any information in this article was obtained by UIG. The Article plainly contained private material, but the central question is not privacy alone: it is whether the Claimants have established the pleaded misuse through unlawful means. On that issue, the evidence falls well short. The article's core theme – that Ms Hurley feared not being chosen as godmother, and that there had been conversations among friends about the possibility – sits squarely with Mr Furnish's acceptance that friends would, naturally, have been talking about who the godparents would be, and with Ms Hurley's own evidence that she discussed the matter with at least two mutual friends, Patrick Cox and Susannah Constantine. Neither was challenged on that evidence. That evidence points towards gossip and discussion among friends, not towards any proved mechanism of UIG.

1307. I also do not regard the substantial change between the draft and the published Article as supporting an inference of UIG. It undoubtedly shows that the story changed markedly in development. But that is not enough. The existence of a materially different earlier draft is equally explicable by the receipt of information from a human source regarded by the journalist or editor as more reliable, shifting the emphasis of the piece to a different angle. That is especially so in the context of diary journalism, where shorthand formulations, gossip, and late-stage recasting are common features of the editorial process. The draft itself shows a story in motion; it does not show, still less prove, any unlawful method.

1308. I should also deal expressly with the way in which this Article was addressed in closing submissions by reference to Sharon Feinstein. Ms Nicholl's evidence did not go so far as to say that Ms Feinstein was in fact the source for this Article. Rather, she identified her as one of several possible contributors to a story that she did not independently

remember. That was the evidential footing on which Ms Nicholl dealt with this Article. There was, correspondingly, no evidential basis on which the Court could move from that limited possibility to a finding that Ms Feinstein obtained information for this Article by unlawful means.

1309. It was not pleaded, however, that Ms Feinstein herself had obtained information for this Article by voicemail interception or any other form of unlawful information-gathering; nor was it pleaded that Ms Nicholl knew that to be so. The pleaded case identified no specific mechanism of UIG in relation to this Article. The allegation that information for the Article came from voicemail interception emerged only in cross-examination.

1310. That distinction matters. What was put to Ms Nicholl was that Ms Feinstein "*did also provide you with information from voicemails*" and that this was how the direction of the story changed. Ms Nicholl did not accept that. Her answer was that her understanding was that Ms Feinstein had very good sources on Ms Hurley. It was not put to Ms Nicholl that she had commissioned Ms Feinstein to intercept voicemails, nor was any coherent case developed that she knew that this was how Ms Feinstein obtained information. There is therefore a marked difference between what was actually put and the case the Claimants ultimately sought to advance in closing submissions.

1311. In those circumstances, it is not open to the Claimants to seek findings, by way of closing submissions, that Ms Feinstein obtained information for this Article by voicemail interception, or that Ms Nicholl knew that this was how it had been obtained. As with the approach I have already explained elsewhere in this judgment in relation to allegations advanced against non-parties (see [61]-[62] above), I record the way in which the parties sought to put their cases. I make no findings that Ms Feinstein engaged in UIG in relation to this Article or generally. Quite apart from the pleading point, there is no evidential foundation for such a finding. Nor, more specifically, is there any evidential platform here for a voicemail case: neither Ms Hurley nor Mr Furnish gave evidence that information of this kind was contained in voicemail messages, and the suggestion in Ms Hurley's witness statement that the information must have come from "*bugging [her] phonelines*" was itself speculative and did not correspond to any pleaded mechanism of UIG in relation to this Article.

1312. Taking the evidence as a whole, I am not satisfied that the Claimants have proved that this Article was obtained by, or was the product of, UIG. The Article's core theme – that Elizabeth Hurley feared not being chosen as godmother, and that there had been conversations among friends about that possibility – is entirely consistent with Mr Furnish's acceptance that friends would naturally have been talking about who the godparents might be, and with Ms Hurley's own evidence that she discussed the matter with Patrick Cox and Susannah Constantine. I also do not regard the substantial change between the draft and the published Article as probative of UIG: it is equally explicable by the receipt of information from a human source regarded as more reliable, causing the story to move in a different direction. I accept the evidence of Ms Nicholl and Ms Griffiths in relation to this Article. I further accept that there is no proved mechanism of UIG for which Associated is responsible. To the extent that Ms Hurley suggested in her witness statement that the information came from "*bugging [her] phonelines*", that was not the pleaded case in relation to this Article. The only context in which any such mechanism potentially arose elsewhere in the proceedings was in relation to allegations concerning Mr Burrows, but this was not advanced as a Burrows Article.

1313. For these reasons, I am not satisfied that the Claimants have proved that this Article was obtained by, or was the product of, UIG. The claims in respect of this Article therefore fail.

(53) *"Elton's new baby next door (in £1.3 million luxury flat)"*: *Mail on Sunday* 2 January 2011 (Caroline Graham & Sharon Churcher)

1314. This is the eighth Article relied upon by Sir Elton and Mr Furnish in their claim.

1315. The Article was published in the *Mail on Sunday*, on 2 January 2011, and was bylined to Caroline Graham and Sharon Churcher. It reported that Sir Elton John and David Furnish's son, Zachary, was being cared for in a second apartment adjoining their existing apartment in Sierra Towers, Los Angeles. It referred to the purchase price of the second apartment, described it as being used for the baby and his nannies, and included material about the nursery and the child's care arrangements. It also contained information about the surrogacy arrangements, including material attributed to Joanne Bubrick of the Center for Surrogate Parenting and to a lawyer, Andy Vorzimer, as well as statements attributed to unnamed sources.

1316. More specifically, the article included: (i) information that a second apartment had been bought next door and was being used for Zachary; (ii) details concerning the nursery and the apartment's decoration; (iii) a description of the child's care arrangements; (iv) information about the surrogacy process, including the role of the Center for Surrogate Parenting; and (v) material concerning paternity, embryos and the surrogate's position. The Article also reported a remark attributed to David Furnish when he and Sir Elton were out dining on New Year's Eve.

1317. Before publication of this Article, Sir Elton John and David Furnish had publicly announced Zachary's birth in *Us Weekly*, on 28 December 2010. That announcement stated that Zachary had been born in California via a surrogate, gave his date of birth and weight, and included a statement that the couple intended to protect and respect the privacy of their surrogate and would not discuss details of the surrogacy arrangements.

(a) The issues

1318. The Claimants' pleaded case is that it is to be inferred from a *Daily Mail* cashbook entry, on or about 4 January 2011, recording a payment of £750 described as "*excl tip and information on Elton John*", that the payment was for unlawfully obtained information used in this Article. Associated points out that the entry is in the *Daily Mail* cashbook, not that of the *Mail on Sunday*, and that no specific unlawful act was pleaded in relation to this Article.

1319. The issue to be resolved is whether the Claimants have proved, on the balance of probabilities, that UIG was used in connection with this Article. At trial, the pleaded case based upon the cashbook entry was not pursued. Instead, it was alleged that deception had been used to obtain information from unidentified individuals. The case ultimately put in cross-examination to Caroline Graham – but not to Sharon Churcher – was that a freelancer or source within Sierra Towers had been used to obtain information about arrangements within the apartment, or the identity of the surrogate mother, by false pretences. A further issue is whether the propensity evidence relied upon by the Claimants, including evidence concerning Dan Hanks or private

investigators more generally, can advance the case beyond speculation in relation to this specific Article.

1320. It is, in my view, necessary to separate the core allegation of UIG for this Article – that information was obtained by false pretences – from a more general suggestion, pursued in cross-examination, that efforts were made, after publication or independently of publication, to discover the identity of the surrogate mother. On the present material, those are not self-evidently the same issue. The former potentially concerns the sourcing of the pleaded Article. The latter may concern subsequent journalistic activity which, even if established, would not necessarily prove unlawful information-gathering for the Article itself.

(b) The evidence

1321. In his witness statement, David Furnish said that the Article caused him and Sir Elton particular upset because it disclosed where Zachary lived, who was with him, and other details they had not wanted publicised. He said that everyone around them – including the surrogate, nanny and staff – was bound by non-disclosure agreements, and that they believed, from the way the Article was written and from the detail it contained about the surrogacy, that there had to have been a leak. He also said that they had not yet released photographs or stories about Zachary, and that they were acutely concerned to avoid public narratives portraying their children as spoiled or as "*trophies for two rich dads*". He further described details about the egg donor, embryos and paternity as among the most confidential matters in their lives, and said that such matters were only later discussed publicly, in April 2011, in an interview with Barbara Walters.

1322. In cross-examination, Sir Elton John accepted that he and Mr Furnish had themselves announced Zachary's birth through *Us Weekly*, and that a press release had been issued by the Center for Surrogate Parenting before the publication of the Article. He nevertheless maintained that they had kept the birth secret until then, had been besieged when the news became public, and would not have complained of this Article unless they believed an injustice had been done to them. He rejected the suggestion that friends in their inner circle would have spoken to the press, saying that such people were not really friends, but gossipers.

1323. In her witness statement, Caroline Graham said that she began working on the story on 28 December 2010, after the *Us Weekly* announcement. She said that the information for the Article came from legitimate sources and material already in the public domain. She identified several sources: (i) the *Us Weekly* announcement; (ii) an interview she conducted with Joanne Bubrick of the Center for Surrogate Parenting; (iii) information from Andy Vorzimer, the lawyer who represented Sir Elton John and David Furnish; (iv) two Los Angeles sources introduced to her by Sharon Churcher (referred to in the evidence, compendiously, as "EJDF8-A"); (v) a "*New York television star and long-time friend*" of the couple ("EJDF8-B"); (vi) people at or in the apartment building, including a freelancer with a photographer and someone who lived in the building; and (vii) property records confirming the ownership of the adjoining flat. She also described going to the Cut steakhouse at the Beverly Wiltshire Hotel with one of her sources and obtaining, via that source, the remark attributed in the article to David Furnish about the baby being back at the apartment sleeping.

1324. There is a contemporaneous document, an email, dated 28 December 2010, from Ms Graham to David Dillon, recording Ms Graham's interview with Joanne Bubrick. Ms Bubrick told her about the surrogate process, the use of an outside egg donor, the fact that the surrogate remained close to the couple, and the way gay parents commonly proceeded, including the mixing of sperm so that neither father knows who is the biological father. The email also records information from Andy Vorzimer about California's procedure for assigning legal parenthood before birth, that the surrogate mother's name would not appear on the birth certificate, and that the baby would leave hospital with David Furnish and Sir Elton John as the legal parents. The email further records that a separate contact had said the surrogate mother had been staying at the Beverly Hills Hotel and may be British, that Graham had "*someone who lives in the block who is also trying for details*", and that the interior designer had known about the baby for three months and had designed the nursery.

1325. In relation to Dan Hanks, Ms Graham said in her witness statement that she did not recall using him on this story, but had been shown an invoice, dated 31 December 2010, involving a licence plate check and a property search. She said she assumed that a car outside Sierra Towers may have prompted an attempt to identify the driver, possibly to try to identify the surrogate mother, and to confirm the purchase of the second apartment so as to stand up information already received from Sharon Churcher's source. She said she did not remember whether she thought beyond asking Dan Hanks whether he could find the information, and that she trusted him to refuse if he could not obtain it lawfully.

1326. Cross-examination focused on the sources said to underpin the Article and, in particular, efforts to identify the surrogate mother. Mr Sherborne took Ms Graham to (i) a letter to EJDF8-A confirming payment ($800) and exclusivity and providing for additional payments (including a further $1,700 if a suspected hotel location for the surrogate could be confirmed and $7,500 if the surrogate could be named exclusively), and (ii) a subsequent email from Ms Churcher (copied to Ms Graham) requesting a $1,000 wire transfer to "*the second*" source and stating that she was "*still trying to get us the surrogate mum's name*" and that the payment was to "*keep her motivated*". Ms Graham accepted that efforts to identify the surrogate mother formed part of what was being pursued, but maintained that (a) EJDF8-A was providing a range of information about the story (not merely surrogate identification), (b) she did not deal with EJDF8-B (it was Ms Churcher's contact), and (c) the surrogate would not have been named without consent.

1327. She was also pressed on whether she knew at the time that Sir Elton John and Mr Furnish wished to protect and respect the surrogate's privacy, including by reference to published reporting stating that a representative had said the couple intended to protect the surrogate's privacy and would not discuss details of the surrogacy arrangements. Ms Graham accepted she was aware the couple released a statement and that a representative had given a "*no comment*", but she said she did not recall reading the specific paragraph relied upon and maintained that she assumed (in light of how the story was being spoken about and the surrogacy agency's willingness to speak) that the couple wanted the story out.

1328. The cross-examination further explored the role (if any) of Mr Hanks in relation to this story. Mr Sherborne put to Ms Graham that she had used Mr Hanks to assist with identifying the surrogate mother (including by reference to a licence plate check and property searches on an invoice). Ms Graham said she did not recall having Mr Hanks

"*trying to find the name of the surrogate*"; she explained that the property search was to confirm ownership of adjoining flats, and she suggested that a licence plate enquiry might have been initiated by a trusted freelancer on the ground (and might have been connected with trying to identify who was in a car), but she did not accept that this amounted to instructing Mr Hanks to "*find the surrogate*". She accepted that she and Ms Churcher were trying to identify the surrogate mother, but she maintained that, if she had obtained the surrogate's name, she would have approached her gently and would never have identified her without her express permission. She repeatedly said that she still did not know who the surrogate was. When shown the *Us Weekly* article stating that the couple intended to protect and respect the privacy of their surrogate and would not discuss details relating to the surrogacy arrangements, she accepted that she had read the article at the time but said she did not remember reading that particular paragraph, and maintained that she nevertheless would have tried to get a letter to the surrogate.

1329. When it was eventually put to her that she had used a freelancer or source within the building to obtain information about arrangements within the flat or the identity of the surrogate mother by false pretences from those working around the child, she denied that, saying they had not used false pretences and had done nothing illegal.

1330. In her witness statement, Sharon Churcher said that, after re-reading the Article, she remembered that some information came from confidential sources. She said that two confidential sources of hers, referred to in the article as a single source, had provided information about the decoration of the second apartment for the baby. She also said that the "*New York television star and long-time friend*" mentioned in the Article was likely another confidential source of hers who moved in similar social circles to Sir Elton and Mr Furnish and who confirmed the purchase of the adjacent apartment and that the baby was living there with nannies. She further said that the public records information concerning ownership of the apartments was the sort of information typically available in property records in the United States, and that the quotations from Joanne Bubrick and Andy Vorzimer were, she believed, obtained by Caroline Graham.

1331. In cross-examination, Sharon Churcher accepted that there had been a property search and that one of them had confirmed the property transfer because they wanted to be sure the story was true. She said property records in California were public. She also accepted that somebody had done an interview at the building with somebody there, but said she did not know if that was Caroline Graham or someone working for her, and that freelancers were sometimes used to help on stories. She did not identify that person and said Ms Graham had never given her a name. Elsewhere in her evidence, she distinguished between the initial reporting of the story and later efforts by Ms Graham – with the help of EJDF8-A – to look into identifying the surrogate mother and obtaining an interview with her, while also saying that Ms Graham "*to her amazement*" got the surrogacy agency to give an interview.

(c) The parties' submissions

1332. The Claimants' case on this Article, as developed in closing, was that the information was highly private and unlikely to have been obtained legitimately. They relied on the Claimants' evidence that the couple were extremely protective of the privacy of the surrogate and of details relating to the child's care and living arrangements. They submitted that the Article contained information which could not readily have

come from the public announcement in *Us Weekly*, and that the journalists' attempts to explain the sourcing left important matters unanswered, particularly the origin of details attributed to building and social sources. They further relied on the evidence that the journalists were prepared to seek to identify the surrogate mother, and on the late-disclosed material concerning private investigators and the use of outside agencies more generally.

1333. More generally, the Claimants relied on the general evidence concerning private investigators and, specifically for this Article, on the evidence concerning Dan Hanks. They contended that his activities included obtaining private information through restricted databases and other unlawful means, and that his involvement here, together with the unexplained payment material and the nature of the information, supported an inference of unlawful information-gathering.

1334. The case put to Caroline Graham when she gave evidence was that she had used a freelancer or source within the building to obtain information about what was going on within the flat, or the identity of the surrogate mother, by false pretences from those working around the child. The Claimants' closing submissions also rely, more broadly, on propensity evidence: they submit that journalists' use of private investigators known to operate unlawfully, coupled with the nature of the information and the absence of a satisfactory legal explanation, may justify an inference of unlawful conduct in a given case. On that footing, the Claimants invite the Court to treat the evidence concerning Dan Hanks and the general conduct of Associated's journalists and agents as lending support to an inference that unlawful methods were used here.

1335. Associated's submissions on this Article are more focused. They submit, first, that the original pleaded case was limited to an inference from the *Daily Mail* cashbook entry, of about 4 January 2011, for £750, and that there was no pleaded allegation of any specific unlawful act in relation to this Article. In oral closing, Associated submitted that, in relation to the 8th and 9th articles in Sir Elton and Mr Furnish's claim, the payment material relied upon by the Claimants related to the wrong title and therefore could not sustain an article-specific inference of UIG.

1336. Second, Associated submits that the evidence showed a legitimate sourcing chain for the Article: the *Us Weekly* announcement; a detailed interview by Caroline Graham with Joanne Bubrick of the Center for Surrogate Parenting; information from Andy Vorzimer; information from EJDF8-A and EJDF8-B, who were said to know the couple socially; information from people at or in the apartment building; the restaurant encounter yielding the David Furnish quote; and a search of public property records confirming ownership of adjoining flats. Associated also point out that the case ultimately put at trial – false pretences used by a freelancer or source in the building to obtain information about arrangements in the apartment or the surrogate's identity – was put to Caroline Graham alone, denied by her, and was unpleaded.

1337. Associated further submit that the evidence differentiates between the published Article and later or collateral efforts to identify the surrogate mother. They rely on the evidence that the Article followed the public announcement in *Us Weekly*, that the surrogacy agency had been identified in the media, that Joanne Bubrick and Andy Vorzimer supplied detailed information, and that public records could confirm ownership of the adjacent flat. As for the possibility that Dan Hanks was asked to identify a vehicle or pursue the surrogate's identity, Associated's case is that this goes, at most, to general

allegations of UIG by TPIs, not to proof that the information actually used in the Article was unlawfully obtained.

(d) Discussion and conclusion

1338. The main difficulty with this Article is not the volume of material but the lack of alignment between pleading, cross-examination and closing. The pleaded case relied only on the cashbook entry. The evidence and Associated's submissions identify a substantial body of apparently legitimate sourcing capable of explaining substantial parts of the Article. The case finally put at trial was narrower and different: false pretences said to have been used by a freelancer or source within the building to obtain information about arrangements in the flat or the identity of the surrogate mother. That case was put only to Caroline Graham, denied by her, and was not pleaded.

1339. I begin with the pleaded case. The original case, based on the *Daily Mail* cashbook entry recording a payment of £750 with the description "*excl tip and information on Elton John*", was not pursued at trial. In any event, the entry related to the *Daily Mail*, not to the *Mail on Sunday*, did not identify any specific unlawful act and did not, on its face, establish any connection between the payment and any particular item of information in this Article. Standing alone, it was a weak and unparticularised basis for so serious an allegation.

1340. The issue on which the matter was ultimately left in closing was whether the Claimants had proved that false pretences were used by a freelancer or source in the building to obtain information about arrangements in the apartment or the identity of the surrogate mother. In my judgment, the Claimants have failed to prove that this is likely to have happened.

1341. First, the allegation itself lacked precision. It was never clearly identified what information was said to have been obtained by false pretences, from whom, by whom, or in what manner. Nor was it put to Ms Graham that she knew, or must have known, that any such false pretences had been used. That would in any event have been a further element requiring proof if the Claimants were to establish liability on the basis of unlawful acts carried out by others.

1342. Second, Associated demonstrated a credible and legitimate sourcing route for most of the Article, including its key parts. The Article followed closely upon the public announcement in *Us Weekly*. There was a detailed interview by Ms Graham with Joanne Bubrick of the Center for Surrogate Parenting. There was information from Andy Vorzimer, the lawyer acting for Sir Elton and Mr Furnish. There was information from EJDF8-A and EJDF8-B, said to know the couple socially. There was information from people at or in the apartment building. There was a restaurant encounter yielding the quote from Mr Furnish. And there was confirmation from public property records of the ownership of the adjoining apartment. Taken together, that body of material readily explains substantial parts of the Article without recourse to any unlawful method.

1343. I accept the evidence of Ms Graham and Ms Churcher as to the sourcing of the Article. I specifically accept Ms Graham's evidence rejecting the suggestion that false pretences were used to obtain information for this Article. I also accept Ms Churcher's evidence that some of the information came from confidential sources who knew the couple or

moved in similar circles, and that property records were used to confirm the purchase of the adjoining apartment.

1344. Third, the propensity case relied upon by the Claimants, based on Dan Hanks and private investigators more generally, cannot materially assist them on the way the case was ultimately put. Any propensity argument based on Mr Hanks would have had to focus on the particular information it was alleged he had been asked to obtain, and by what unlawful mechanism. That focus is absent. The Claimants did not clearly plead, and did not clearly articulate at trial, the alleged UIG mechanism said to have been used for this Article. In those circumstances, the general evidence concerning Mr Hanks or other private investigators cannot take the case beyond speculation.

1345. Fourth, the cross-examination concerning attempts to identify the surrogate mother ultimately has little or no bearing on the issue I must decide. In the context of this story, journalistic efforts to identify the surrogate mother were not, in themselves, remarkable. Nor would such efforts necessarily have involved UIG: the Claimants did not identify any specific mechanism by which the surrogate's identity was allegedly to be obtained unlawfully. More importantly, the surrogate mother was not in fact identified by the journalists. I also accept Ms Graham's evidence that, had she obtained the surrogate's identity, she would simply have approached her sensitively to investigate whether she wished to comment or give an interview, and would not have identified her without consent. Such an approach would not itself have been unlawful.

1346. Fifth, and stepping back, the belated attempt to advance a case of UIG against one only of the two bylined journalists in the witness box was diffuse and unclear. The Court cannot make findings of so serious a kind based on an allegation that was neither properly pleaded nor properly defined, and which was not put squarely, coherently and comprehensively to the relevant witnesses.

1347. Drawing these matters together, I am not satisfied that the Claimants have proved that false pretences were used by a freelancer or source in the building to obtain information about arrangements in the apartment or the identity of the surrogate mother. Nor am I satisfied that the general propensity evidence relied upon by the Claimants, including the material concerning Dan Hanks, can bridge the gap in their article-specific case. In consequence, the claim for UIG in connection with this Article is dismissed.

(54) *"Katie Nicholl column: AIDS foundation ball"*: *Mail on Sunday* 10 July 2011 (Katie Nicholl)

1348. This is the ninth Article relied upon by Sir Elton and Mr Furnish in their claim.

1349. This was a short Diary item published in the *Mail on Sunday*, on 10 July 2011, under the byline of Katie Nicholl. That week, the Diary column was being edited by Charlotte Griffiths. The Article reported that Sir Elton John had been "*begging*" Angelina Jolie to help host his AIDS Foundation ball, that Jude Law had been "*bagged*" to co-host the Winter Ball in October, but that Angelina Jolie was also wanted "*in on the act*", according to "*a mole at the Grey Goose Character & Cocktails party*". It added that Angelina Jolie and Brad Pitt would be working in the United Kingdom over the next year, making collaboration "*likely*", and concluded with a light social flourish about the Jolie-Pitt children and Sir Elton's son, Zachary.

(a) The issues

1350. The issue is whether the Claimants have proved, on the balance of probabilities, that the information in this Article was obtained by UIG. The pleaded case relied on a cashbook entry, recording a payment of £500, in the week of 25 April 2011, with the description "*Special help on Elton John*", from which it was said an inference of unlawful commissioning could be drawn. At trial, however, that pleaded case was not pursued; instead, the challenge focused on whether the information had been obtained by voicemail interception or, alternatively, by blagging. In their closing submissions, the Claimants invited the Court to find that the Article "*contained information unlawfully obtained by Ms Nicholl or Ms Griffiths by voicemail interception or blagging*".

(b) The evidence

1351. David Furnish dealt with this Article in his second witness statement. He explained that the Winter Ball was being sponsored by Grey Goose Vodka; that Sir Elton was originally supposed to host but had a concert commitment and could not be present; that Grey Goose wanted an alternative host of similar profile; that Jude Law had been lined up but had to pull out; and that they hoped to secure Angelina Jolie, who was an obvious candidate because of her humanitarian profile and "*star power*", but that she ultimately said no. He also said that publicity around the event would have been handled jointly by Grey Goose and the Elton John AIDS Foundation, and that Grey Goose had been excellent partners who would not have put out information without collaborating first. David Furnish was not cross-examined on his evidence about this Article.

1352. In her first witness statement, Katie Nicholl said that she did not remember the Article or the source, but that it was possible she wrote or sourced it for the column, which was edited that week by Charlotte Griffiths. She said that Charlotte Griffiths and she knew the publicists at Grey Goose PR, who would invite the Diary team to events in exchange for coverage, and that the reference to "*a mole*" at the Grey Goose Character & Cocktails party likely referred to a member of the PR team connected with Grey Goose, which sponsored the ball. She explained that "*mole*" was typical Diary shorthand for a source and that the PR team would have known about the VIPs involved and might provide background in the hope of securing press coverage.

1353. In her second witness statement, Katie Nicholl addressed directly the pleaded allegation concerning the payment of £500. She said the payment record referred to Jon Steafel, who worked for the *Daily Mail*, that she had nothing to do with him, and that the payment was dated 25 April 2011 whereas the Article was published on 10 July 2011. She said she was "*quite sure*" that the payment did not relate to her story and that the piece was "*a snippet likely obtained from a PR or contact linked with organising the event*".

1354. In cross-examination, Charlotte Griffiths said that she did not remember the Article, did not remember writing it, and did not remember how it was sourced. She said, however, that looking at the wording of the item and its reference to "*a mole at the Grey Goose Character & Cocktails party*", she could explain how the Diary worked at the time. Her evidence was that she tended to go to Moët and Perrier-Jouët events, whereas Katie Nicholl tended to go to Grey Goose parties because she had a good contact at the PR agency handling Grey Goose. She thought that if the item said "*a mole at the party*",

that probably meant a PR person. She also accepted that her witness statement reference to Marc Baker as a possible source was speculative and reflected an attempt, years later, to think of someone who knew Sir Elton John and attended those events. She said that Grey Goose PRs wanted mentions for their client in national newspapers, that such mentions would be valuable to them, and that they did not owe loyalty to Sir Elton personally.

1355. Katie Nicholl gave evidence to like effect. She accepted that she did not remember the Article, or its source, and that she had not been editing the column that week. She nevertheless maintained that a Grey Goose PR was a plausible source. When it was put to her that such a disclosure would have been "*unhelpful*" because it might jeopardise efforts to secure Angelina Jolie as host, she rejected that as speculation and explained that, from the PR's viewpoint, a mention of the Grey Goose Character & Cocktails party in a widely-read Diary column months ahead of the event would itself have been valuable publicity. She also said that, even if aspects of the item were not entirely accurate, that did not suggest unlawful sourcing: the Diary relied on real people, and real people sometimes got things wrong. She denied absolutely the suggestion that the information had been obtained by voicemail interception and said she had never intercepted a voicemail.

1356. The cross-examination also explored a hard-copy document which appeared to be a list of prospective Diary stories for the relevant week. It included a note to the effect that Angelina Jolie and Sir Elton John were getting together for a private meeting to discuss Cambodia and that she was going to co-host his next ball. Ms Griffiths suggested that such story lists were working documents for the Friday conference and that stories often changed as they were followed up and stood up. Ms Nicholl similarly said that stories frequently changed in the process of checking them with sources and obtaining more accurate information, and that the fact of a change in angle did not indicate unlawful acquisition. When counsel suggested that the final, more specific version of the story must have come from voicemail interception, she rejected that suggestion and again said that the Diary relied on real sources, not voicemail interception.

(c) The parties' submissions

1357. The Claimants submitted, first, that the information in the Article concerned behind-the-scenes discussions about whether Angelina Jolie would host the Winter Ball and was therefore private and unlikely to have been disclosed legitimately. They relied in their pleaded case on the April 2011 cashbook entry recording a payment of £500, described as "*Special help on Elton John*", contending that an inference could be drawn that the payment related to an unlawful act commissioned by Associated. As the case developed at trial, however, the challenge focused not on that pleaded payment allegation but on the supposed improbability of the Grey Goose PR explanation, on the fact that the evidence showed there had in truth been discussions about possible hosts, and on the contention, first put in cross-examination, that one of the journalists had obtained the information by listening to voicemails or, alternatively, by "*blagging*" someone at Grey Goose. The Claimants also relied on the working story-list document as showing that the story changed direction in a way said to require some highly accurate inside information.

1358. Associated submitted that the claim in respect of this Article was not made out. It relied on Katie Nicholl's evidence that the April 2011 payment did not relate to this Article,

both because it referred to Jon Steafel and because it pre-dated publication by about 10 weeks. Associated further relied on the evidence of both Katie Nicholl and Charlotte Griffiths that a Grey Goose PR was a likely source for the item, and submitted that this was an inherently plausible explanation for a short Diary story referring expressly to the Grey Goose Character & Cocktails party. Associated also submitted that the challenge to that explanation as "*unhelpful*" to Grey Goose was speculative, and that the allegations of voicemail interception and blagging first raised in cross-examination were unpleaded, unsupported by any evidence, and should not have been advanced.

(d) Discussion and conclusion

1359. In my judgment, the Claimants have failed to prove that this Article was the product of UIG.

1360. I start with the pleaded case. The pleaded inference from the £500 cashbook entry was not pursued at trial. In any event, I would not have accepted it as demonstrating UIG. The payment record relied upon does not, on its face, identify this Article. As Katie Nicholl explained in her evidence, it refers to Jon Steafel, who worked for the *Daily Mail*, not to her; and it is dated 25 April 2011, about 10 weeks before publication of the Article on 10 July 2011. There is no proven nexus between that payment and this Article. Still less does the entry itself demonstrate any particular act of UIG. It records only that payment was made for "*special help on Elton John*", without identifying the nature of the help or establishing any connection with this Article.

1361. Second, I reject the unpleaded allegations of voicemail interception and blagging that were first advanced in the witness box. They were not part of the pleaded case. No article-specific evidential foundation was laid for either allegation. The suggestion that one of the journalists must have obtained the information by "*listening in to voicemails*" because the item concerned private discussions simply assumed the conclusion that had to be proved. The same is true of the alternative suggestion, put only to Charlotte Griffiths, that the information might have been obtained by "*blagging*" someone at Grey Goose. Those were serious allegations. They were made without prior notice to Associated or the witnesses, and without any supporting evidence capable of justifying a finding of that kind on the balance of probabilities. Consistently with the approach I have taken elsewhere in this judgment, such allegations should not have been made in that form, and I place no weight upon them.

1362. Third, I accept the evidence of Katie Nicholl and Charlotte Griffiths. I found their evidence about the sourcing of this Article to be truthful and persuasive. Their evidence was appropriately careful. Neither purported to remember more than she honestly could after many years. Ms Griffiths was clear when she was speculating and corrected her earlier reference to Marc Baker as no more than an attempt to think of a possible Elton-related contact. Ms Nicholl did not over-claim her own memory. Both, however, gave a coherent explanation rooted in ordinary Diary practice: that a short item expressly framed by reference to the Grey Goose Character & Cocktails party was likely to have come from the Grey Goose PR world, where sponsors sought mentions for their events in national newspapers. I regard that explanation as plausible, and as fitting the nature and language of the item.

1363. Fourth, the evidence of David Furnish, which was unchallenged on this Article, does not advance the Claimants' case far enough. It confirms that there were indeed

discussions about possible hosts for the Winter Ball; that Jude Law had at one stage been involved; and that Angelina Jolie was considered but declined. That shows that the published item touched on a real subject-matter. But that does not prove unlawful sourcing. It is entirely consistent with the information having reached a publicist or other person connected with the event in the ordinary way. Nor does the fact that the item did not capture the position with complete accuracy assist the Claimants. As Ms Nicholl said, Diary stories depended on real sources, and real sources sometimes got things wrong.

1364. Fifth, I do not regard the working story-list document as advancing matters. At most, it shows that at some stage a slightly different angle was being considered, involving a supposed meeting about Cambodia and co-hosting the ball. Both journalists explained, credibly, that such working-note stories often changed as they were followed up and stood up. That is ordinary journalistic practice. It does not support an inference that the final version must have come from voicemail interception or any other form of UIG.

1365. Drawing these matters together, this is a case in which the original pleaded allegation based on the cashbook entry was abandoned in substance; the replacement allegations of voicemail interception and blagging were unpleaded and unsupported; and the only direct evidence from the journalists was credible evidence pointing to an ordinary, lawful source for a short Diary item of this kind. In those circumstances, I am not satisfied that the Claimants have discharged the burden of proving UIG. The claim based on this Article is therefore dismissed.

(55) *"Harry cooks up a reunion over dinner at Chelsy's"*: *Mail on Sunday* 9 October 2011 (Katie Nicholl)

1366. This is the thirteenth Article relied upon by Prince Harry in his claim.

1367. This was a lead Diary item published in the *Mail on Sunday*, on 9 October 2011, under the byline of Katie Nicholl. It reported that Prince Harry and Chelsy Davy had discussed getting back together during dinner and a quiet night at Ms Davy's flat before Prince Harry left for California for helicopter training. The Article said that Ms Davy had invited Prince Harry to her Belgravia home, that she had cooked for him, that they had discussed old times, and that Prince Harry had said that he wanted them to get back together. It further reported that Ms Davy had reservations about renewing the relationship, that the Royal Wedding had been a "*wake-up call*" for her, and that she wanted to make her own career.

1368. The issue is whether Prince Harry has proved, on the balance of probabilities, that the information in this Article was obtained by UIG. The information identified in Schedule B is "*information regarding the Claimant's relationship with Chelsy Davy including as to their communications*". No specific act of UIG was pleaded in relation to this Article. At trial, however, it was put to Ms Nicholl for the first time that the information had been obtained by voicemail interception. In closing submissions, Prince Harry submitted that "*the clear inference to be drawn is that Ms Nicholl commissioned UIG, including voicemail interception, to obtain [the] information*".

(b) The evidence

1369. In his evidence dealing with this Article, Prince Harry said that it concerned his relationship with Ms Davy, including their communications. He said that the information in it was private and would only have been known by him and Ms Davy, or possibly a close friend of one or other of them. He said that he was not sharing private dinner conversations with anyone and that the information would likely have been picked up from communications between them, or communications to a close friend. Prince Harry was not challenged in cross-examination on this evidence.

1370. In her first witness statement, Katie Nicholl said that, when she was first shown the Article, she checked her notebooks and found a page which confirmed to her that "DOS13-A" had been a source for information in the Article about Ms Davy's reservations about getting back together, including that she wanted her freedom and her career. She said that DOS13-A was a contact of a regular freelancer to her column who had worked at the *Mail on Sunday* Diary in the past. Ms Nicholl said that she understood that contact to be a female friend of Ms Davy who knew both Ms Davy and Prince Harry very well and had been a regular and reliable source of information.

1371. Ms Nicholl further said that she had been shown a payment record, showing a payment of £500 to Holly Millbank, dated the same day as the Article, with the description "*S Harry cooks up a reunion over dinner at Chelsys*". She said that Holly Millbank was not DOS13-A, but was another freelance journalist who had a good confidential contact who knew a member of Ms Davy's family, "DOS13-B". Ms Nicholl said that it was very possible that Holly Millbank had brought in the tip and that she had then second-sourced it with DOS13-A, which she described as her regular practice. She also said that other information in the Article, including that Ms Davy had attended the Royal Wedding as Prince Harry's date, was working at Allen & Overy, and had attended the Boodles Boxing Ball with Jamie Richards, had already been reported in the press and would have been taken from cuttings.

1372. In her second witness statement, Ms Nicholl explained that she was not willing publicly to identify the freelance journalist who had the source DOS13-A, because doing so would be likely to identify that source, a female friend of Ms Davy. She said that the information had been provided on a confidential basis and that she had agreed to protect that confidentiality.

1373. Ms Nicholl was questioned about her contemporaneous notebook note, said to confirm the involvement of DOS13-A. She accepted that it contained some, but not all, of the information that appeared in the published Article. In particular, she accepted that the notes did not contain the details that Prince Harry and Ms Davy were having dinner, that it was a quiet night in at her flat, that she had invited him over for a Friday night dinner, or that he had stayed until the early hours. Ms Nicholl said, however, that the notes were not complete, that they might not represent all of her notes, and that there may have been other conversations. She maintained that the information had come from one of Ms Davy's friends through the freelance journalist with whom she worked, and she denied the suggestion that it had come from voicemail interception.

1374. The cross-examination also addressed Ms Nicholl's refusal to identify the freelance journalist who had the source DOS13-A. Ms Nicholl said that she would not identify the journalist because she did not want to risk exposing that journalist's contact.

She maintained that she knew who the source was, knew how closely connected she was to Ms Davy and Prince Harry's circle, and was satisfied as to the legitimacy of the source.

1375. Ms Nicholl was also asked about Holly Millbank. She accepted that she had no surviving note of any report by Ms Millbank relating to this Article. She nevertheless said that Holly Millbank had a very good source in Ms Davy's family and that she remembered that clearly. Again, she denied that the Article had been sourced by voicemail interception.

(c) The parties' submissions

1376. Prince Harry submitted that the information in the Article was plainly private and concerned an intimate dinner, private discussions and communications between him and Ms Davy. It was submitted that the circle of those who could have known the information was very limited. Reliance was placed on Prince Harry's unchallenged evidence that he was not sharing private dinner conversations with others. Prince Harry further submitted that Ms Nicholl's explanation of sourcing should not be accepted because the surviving note did not contain key elements of the published story, including the dinner itself, the Friday-night invitation, and Prince Harry's staying until the early hours. It was submitted that the only realistic inference was that the missing information had been obtained by voicemail interception. The Claimant also criticised the fact that the freelance journalist who was said to be the conduit for DOS13-A was not identified and could not therefore be tested.

1377. Associated submitted that the claim in respect of this Article was not made out. It relied on Ms Nicholl's evidence that the story came from ordinary journalistic sources: a friend of Ms Davy spoken to through a trusted freelancer, a possible initial tip from Holly Millbank, and background from cuttings. Associated submitted that there was no pleaded allegation of any particular act of UIG in relation to this Article and that the allegation of voicemail interception raised in cross-examination was unpleaded and unsupported by evidence. It submitted that the fact that not all details in the published Article appeared in one surviving notebook entry was not a proper basis for such a serious allegation. Associated invited the Court to accept Ms Nicholl's evidence and dismiss the claim.

(d) Discussion and conclusion

1378. In my judgment, Prince Harry has failed to prove that this Article was the product of UIG.

1379. I start with the pleaded case. No specific act of UIG was pleaded in relation to this Article. The case that emerged at trial was an allegation of voicemail interception, first advanced in cross-examination of Ms Nicholl and then pursued in closing submissions. That was a serious allegation. It was not pleaded and no proper article-specific evidential foundation was laid for it.

1380. The sole basis upon which that allegation was put to Ms Nicholl appears to have been that not all of the information in the published Article was contained in the surviving note of what a source had provided. I reject that as an adequate basis on which to sustain an allegation of voicemail interception. A journalist's surviving notes are not

necessarily a complete record of everything said by a source, still less a complete record of all conversations that may have taken place in the process of obtaining and standing up a story. The fact that some details in the final published version do not appear in one notebook entry does not, without more, support an inference of voicemail interception.

1381. Nor does Prince Harry's evidence, although unchallenged, take the matter far enough. I accept that the information in the Article was private in character and concerned a sensitive aspect of his relationship with Ms Davy. I also accept that he did not believe he was sharing private dinner conversations with others. But that does not of itself prove UIG. It does not exclude the possibility that information about the state of the relationship, Prince Harry's wish to resume it, and Ms Davy's reservations may have been communicated by one or more friends within their social circles. The Article itself is framed by reference to what "*one of the couple's friends*" and "*friends*" were said to have known or said.

1382. I accept Ms Nicholl's evidence as to the sourcing of this Article. Her account was coherent and anchored in contemporaneous material. She identified a notebook page which, she said, linked the story to DOS13-A, a female friend of Ms Davy spoken to through a freelance journalist who had previously worked with the Diary. She also gave a plausible explanation for Holly Millbank's possible role as the original tipster, to be second-sourced in what Ms Nicholl said was her ordinary practice. Her evidence that some of the published background detail came from press cuttings was similarly unremarkable. I also accept her evidence that she was not willing to identify the freelancer because doing so might expose the underlying source.

1383. I place weight on the fact that Ms Nicholl denied absolutely the suggestion of voicemail interception when it was put to her directly in cross-examination. There is no evidence, beyond speculation founded on the incompleteness of a surviving note, that she intercepted voicemails or instructed anyone else to do so in relation to this Article. Allegations of voicemail interception are serious. They were made against Ms Nicholl without prior notice to her or Associated, and without any supporting evidence capable of justifying a finding of that kind on the balance of probabilities. Consistently with the approach I have taken elsewhere in this judgment, such allegations should not have been made in that form, and I place no weight upon them.

1384. Drawing these matters together, this is a case in which no specific act of UIG was pleaded; the serious allegation of voicemail interception was unpleaded and advanced only at trial; the sole basis for that allegation was the fact that some details in the published Article did not appear in the surviving note; and Ms Nicholl gave evidence, which I accept, of ordinary and lawful sourcing for the story. In those circumstances, I am not satisfied that Prince Harry has discharged the burden of proving UIG. The claim based on this Article is therefore dismissed.

(56) *"Prince Harry faces lonely New Year's Eve after girlfriend Cressida flies to Richard Branson's private island without him"*: *Daily Mail* 27 December 2013 (Rebecca English)

1385. This is the fourteenth Article relied upon by Prince Harry in his claim.

1386. The Article was published, on 27 December 2013, under the byline of Rebecca English. It reported that, contrary to a story, first published in *The Sun*, that Cressida Bonas would be joining Prince Harry at Sandringham, she had instead flown out of the country

to Necker Island, Richard Branson's private Caribbean island, where she was said to be spending time with her half-sister, Isabella Branson, and the Branson family. The Article said that Prince Harry had spent Christmas at Sandringham, that the couple had parted when he drove to Sandringham for Christmas, that Ms Bonas had flown out of the country shortly afterwards, and that Prince Harry did not appear to have gone with her, although a quoted source said that that possibility could not be ruled out. It also referred to the couple's relationship as increasingly serious.

(a) The issues

1387. The issue is whether Prince Harry has proved, on the balance of probabilities, that the information in this Article was obtained by UIG. No specific act of UIG was pleaded in relation to this Article. At trial, however, it was put to Ms English, for the first time, that she had asked Mike Behr to find out, presumably by blagging, the "*travel movements*" of Prince Harry and Ms Bonas and that the product of that UIG was used in the Article. That was the case then pursued in closing submissions.

(b) The evidence

1388. In his witness statement, Prince Harry said that the Article concerned his relationship with Ms Bonas, including information about their whereabouts and plans. He described the Article as "*creepy*" and said that, although Kensington Palace might have been able to say that Ms Bonas was not going to Sandringham, he did not understand how Associated knew that she was on Richard Branson's island. He said that it was a "*horrible existence for a young girl to be stalked like this*" and that Ms Bonas had probably been tracked, or information about her flight blagged, or that she had been placed under surveillance. In cross-examination, Prince Harry accepted that Palace press officers might on occasion provide guidance in order to correct an inaccurate story, but maintained that that did not explain how the information about Necker Island had been obtained.

1389. There was contemporaneous email correspondence between Ms English and Nick Loughran, Assistant Press Secretary to the Duke and Duchess of Cambridge and Prince Harry, on the night of 26 December 2013 and the following day. In an email sent shortly before midnight on 26 December, Mr Loughran told Ms English, "*for your info and guidance*", that Ms Bonas was not at, and was not going to, Sandringham. He asked that the information not be used for another "*headline grabbing story*", but rather so that editors could be told there was no need to follow up the inaccurate report published in *The Sun*.

1390. On 27 December 2013, Ms English also corresponded with a confidential source, "DOS14-A". In response to her enquiry about the accuracy of *The Sun* story, DOS14-A replied:

> "The story is erroneous. I would be grateful if, while saying it is erroneous, you would not say why. Cressida has long planned to go with her sister Isabella Branson to Necker to be with the Branson family. She emailed me from the airport on Boxing Day to tell me the flight had been long delayed. I have just rung her and she has now arrived".

1391. Later the same day, the same source added that Ms Bonas had said she would be returning on 3 January, and that the source understood Prince Harry would not be going to Necker, although that could not be ruled out entirely.

1392. Ms English put the Necker element of the story to Mr Loughran. He responded that there was no guidance he could give on "*the Necker story*", saying: "*So over to the quality of your sources on this one*", and explaining that the Palace had to try to retain a degree of privacy for Prince Harry and Ms Bonas. Ms English replied that she was "*100 per cent sure of the story re her going away*".

1393. In her first witness statement, Ms English said that this Article was written in response to the inaccurate report in *The Sun* that Ms Bonas was due to attend Sandringham. She said that the News Desk asked her to check whether the story should be followed up; that she emailed both Prince Harry's press secretary and a confidential source close to Ms Bonas, DOS14-A; that the press secretary confirmed Ms Bonas was not going to Sandringham; and that DOS14-A told her Ms Bonas had gone to Necker Island with the Bransons and might meet Prince Harry in the New Year. Ms English also said that descriptions such as "*source*", "*friends*" or "*a close friend*" in stories of this kind were accurate descriptions of the relationship between the source and the subject of the story where anonymity had been requested, and were not euphemisms for phone hacking.

1394. Thus, the documentary record distinguishes clearly between two categories of information. The first was the correction of the inaccurate Sandringham story published by *The Sun*, in relation to which Palace guidance was given. The second was the information that Ms Bonas had travelled to Necker Island, together with the detail that she had emailed from the airport on Boxing Day and had by then arrived, in relation to which the Palace declined to give guidance and Ms English relied on her own source, DOS14-A.

1395. Prince Harry relied on a series of earlier emails exchanged between Ms English and Mike Behr in mid-December 2013 in connection with a different South Africa-based story, not complained of in these proceedings. That story concerned Prince Harry's return via Cape Town from the *Walking With The Wounded* charity expedition to Antarctica. In her second witness statement, Ms English said that she had asked Mr Behr, a local stringer, to assist with that story and to keep an eye on developments on the ground, and that she understood the charity itself was providing journalists with information about the group's movements.

1396. The Behr emails included references to flight timings, to whether Prince Harry would remain in Cape Town or return to the United Kingdom, and to there being "*no indication*" that "*she*" was coming to Cape Town. They also included the later email saying, "*Know his hotel, seen bill but so far no sighting of the bearded. No reg of her at hotel*". In cross-examination, Ms English accepted that the reference to "*she*" was likely to be to Ms Bonas and that the charity would not know whether Ms Bonas was coming to Cape Town. She nevertheless maintained that these emails had nothing to do with the Article now under consideration, and said that they related instead to the separate Cape Town story concerning Prince Harry's return from Antarctica. She rejected the suggestion that she had asked Mr Behr to obtain information by checking any "*flight system*" or hotel register. Her evidence was that, in that context, he was being used as a local stringer to keep an eye on the story on the ground.

1397. By contrast, the documentary record relating directly to this Article shows that the information about Ms Bonas going to Necker came from DOS14-A, who was in direct communication with Ms Bonas, and that Ms English then checked aspects of the story with the Palace, which declined to comment on the Necker element. In re-examination, Ms English said that the source was "*absolutely in direct contact*" with Ms Bonas and that the email in which DOS14-A said Ms Bonas had emailed from the airport on Boxing Day and had arrived in Necker was "*exactly*" where she got the information from.

1398. I also note that the Article itself was presented as correcting or "*scotching*" the inaccurate Sandringham report. It was not a free-standing travel story arising from independent investigations into Prince Harry's and Ms Bonas's whereabouts. The contemporaneous documents, and Ms English's evidence about them, are entirely consistent with that: an inaccurate earlier report prompting a request for guidance from the Palace, and a separate confidential source close to Ms Bonas supplying the information about her actual whereabouts.

(c) The parties' submissions

1399. Prince Harry submitted that the information in the Article was private and concerned his relationship with Ms Bonas, including their whereabouts and plans over Christmas and New Year. He submitted that the information as to Ms Bonas being on Necker Island was not something the Palace should have been discussing and that the Court should be suspicious as to how it was obtained. He further submitted that the emails between Ms English and Mike Behr raised a proper inference that Ms English had used him to obtain private travel information by unlawful means and that the product of that UIG was reflected in the Article.

1400. The Claimants further submitted that the documentary material showed Ms English's willingness to seek out private travel information and that the Court should draw the inference that the information about Ms Bonas's movements came from blagging or some similar unlawful method rather than from a lawful source. They emphasised Prince Harry's evidence that the Article was intrusive and that it was a "*horrible existence*" for a young woman to be followed or tracked in that way.

1401. Associated submitted that the claim in respect of this Article was not made out. It relied on the contemporaneous sourcing documents, which it said provided a clear and lawful explanation for the information published. Associated submitted that the correction of the Sandringham story came from Palace guidance, but that the information about Necker Island came from a confidential source, DOS14-A, who had direct contact with Ms Bonas, as shown by the source's statement that Ms Bonas had emailed from the airport on Boxing Day and had been spoken to after arrival. Associated submitted that the Behr allegation was unpleaded, was first raised in cross-examination, and was based on earlier, unrelated South Africa emails that had nothing to do with this Article.

1402. Associated further submitted that, even if the Behr emails gave rise to some suspicion as to how Mr Behr had obtained some of the information he was passing to Ms English in December 2013, that could not justify a finding that this particular Article was the product of UIG. The positive evidence as to sourcing, it was submitted, displaced any scope for such an inference.

(d) Discussion and conclusion

1403. In my judgment, Prince Harry has failed to prove that this Article was the product of UIG.

1404. I begin, again, with the pleaded case. No specific act of UIG was pleaded in relation to this Article. The allegation advanced at trial was that Ms English had asked Mike Behr to find out the travel movements of Prince Harry and Ms Bonas and that he had done so by blagging. That was a serious allegation. It was not pleaded, was first advanced in cross-examination, and no proper article-specific evidential foundation was laid for it.

1405. The contemporaneous documentary evidence provides a clear and coherent explanation of how the Article was sourced. The immediate trigger for the Article was an inaccurate report that Ms Bonas would be attending Sandringham. Ms English sought and received guidance from the Palace that this was wrong. Separately, and importantly, she received information from a confidential source who stated that Ms Bonas had long planned to go with Isabella Branson to Necker, that she had emailed from the airport on Boxing Day saying the flight was delayed, and that the source had spoken to her after she arrived. Later the same day, the source added information as to Ms Bonas's expected return date and the source's understanding that Prince Harry would not be going to Necker. Mr Loughran expressly declined to give any guidance on "*the Necker story*", leaving it to "*the quality of your sources*". That material positively demonstrates that the Necker information came from source-based journalistic enquiries, not from the Palace and not, on the evidence before me, from UIG.

1406. I accept that the Behr emails may raise legitimate questions about the nature of some of the information he was providing to Ms English in relation to Prince Harry's movements in South Africa earlier in December 2013, particularly given the references to Ms Bonas in those exchanges. I also accept Ms English's evidence, for the reasons set out in Appendix 2 (see [A2.267]-[A2.283]), about the general nature of her relationship with Mr Behr and that, in this context, he was being used as a local stringer in connection with a different story concerning Prince Harry's return via Cape Town from the *Walking With The Wounded* expedition. Whether or not those emails might justify suspicion, in the abstract, about some of the methods by which Mr Behr obtained information, they do not provide a proper basis for connecting him to the Necker information. Most importantly, the positive contemporaneous evidence as to sourcing leaves no proper basis for drawing an inference of UIG in relation to this Article.

1407. Prince Harry's own evidence does not take the matter further. I accept that he found the Article intrusive and was genuinely concerned by how journalists appeared to know private information concerning his relationships. But suspicion, even understandable suspicion, is not proof.

1408. I accept that Prince Harry's concerns about how the information in this Article had been obtained were genuinely held. In particular, I accept that he feared that Ms Bonas had been tracked, placed under surveillance, or that information about her flight had been blagged. But the contemporaneous documents provide a lawful explanation for the information published and do not support those fears. Those documents show that the information about Ms Bonas's movements came from DOS14-A, who was in direct contact with Ms Bonas and had been informed by her of her travel arrangements, rather than from surveillance, blagging or any other form of UIG.

1409. Drawing these matters together, this is a case in which no specific act of UIG was pleaded; the allegation of blagging through Mike Behr was first advanced at trial; the Behr emails relied upon concerned a different story; and there is clear contemporaneous evidence that the relevant information in the Article was obtained from lawful sources, namely Palace guidance correcting the Sandringham report and a confidential source with direct contact with Ms Bonas. I accept Ms English's evidence as to sourcing. In those circumstances, I am not satisfied that Prince Harry has discharged the burden of proving UIG. The claim based on this Article is therefore dismissed.

(57) *"Girl about town: Elton in Monaco ambulance dash"*: *Mail on Sunday* 8 August 2015 (Charlotte Griffiths)

1410. This is the tenth Article relied upon by Sir Elton and Mr Furnish in their claim.

1411. The Article was published, on 8 August 2015, under the byline of Charlotte Griffiths. It reported that Sir Elton John had suffered a health scare while at his home in the South of France; that he had been worried when his leg had swollen during a game of tennis; that he had been taken by ambulance to the Princess Grace Hospital in Monaco; that he had been kept under observation overnight and administered injections, including an adrenaline shot; and that Mr Furnish had remained at home with the children. The Article also referred to earlier health incidents involving Sir Elton John.

(a) The issues

1412. The issue is whether the Claimants have proved, on the balance of probabilities, that information in this Article was obtained by UIG. The pleaded case did not identify any specific unlawful act. Rather, it relied upon two payments, recorded on or around 1 September 2015, and alleged that it could be inferred that those payments were made for information unlawfully obtained and used in the Article.

1413. At trial, however, a different case was put to Ms Griffiths for the first time in cross-examination: namely, that the information in her notes relating to this Article had been obtained either by blagging the hospital or by listening in to voicemails. That case had not been pleaded, no prior notice had been given of it, and no article-specific evidential foundation had been laid for it.

(b) The evidence

1414. In his witness statement, Mr Furnish relied on this Article as an example supporting the allegation that the *Mail* had stolen and exploited information about Sir Elton's medical condition. He did not, however, identify any direct evidence of the mechanism by which the information in this Article had allegedly been obtained.

1415. In cross-examination, both Mr Furnish and Sir Elton accepted that the Article was wrong in important respects. Sir Elton said that he had not been on the tennis court when he was taken ill; that he had not been rushed to hospital because his leg had "*blown up*"; and that the real problem was an infection in one of his glutes. Mr Furnish similarly said that Sir Elton "*wasn't on the tennis court*". Sir Elton also said that Mr Furnish had travelled with him in the ambulance and remained with him at the hospital, contrary to the version given in the Article.

1416. Those inaccuracies are of some significance. If the Article had in truth been based on confidential information obtained from hospital staff or through voicemail interception, one would have expected the resulting account to have been more accurate on the basic facts of Sir Elton's condition, how it arose, and whether Mr Furnish was with him.

1417. In her first witness statement, Ms Griffiths said that on re-reading the Article she did not at first remember it or her involvement with it. She initially speculated that it might have come from either Marc Baker or Geordie Greig, but after checking her notebooks and the surrounding documents she revised that position. She said that Sir Elton having been hospitalised had already been reported in the French press in the days leading up to publication, and that one report suggested the episode might have followed drinking, which would, if true, have been intrinsically newsworthy given Sir Elton's well-known sobriety.

1418. Ms Griffiths said that the News Desk might well have picked up the French local story and asked the Diary team to stand it up if it was true. She said that, from the sequencing of her notes and the contemporaneous documents, her belief was that the News Desk had started looking at the story and had then asked for her help because she knew Gary Farrow, Sir Elton's publicist.

1419. Ms Griffiths said that, having refreshed her memory from the notebooks and surrounding documents, she could see that she spoke to Mr Farrow and that he engaged with her enquiries. In particular, she said that he provided information she did not previously have, including where Sir Elton had injured himself, that he had gone to hospital because he was worried about swelling in his leg after a game of tennis, that he had received an adrenaline shot, and that Mr Furnish had not attended the hospital with him.

1420. In cross-examination, Ms Griffiths explained that her water-damaged notebook contained notes relating to more than one story and that the notes specifically relating to Sir Elton were in two parts. She said that the first, shorter note at the top of the page was likely to have been the initial tip from the News Desk, and that the later starred section of the notes represented what she wrote down while speaking to Mr Farrow. She described her ordinary practice of using the first available blank space in a notebook when taking a call and said that she often began on the right-hand page and then continued onto the left if necessary.

1421. The contemporaneous email correspondence between Ms Griffiths and Mr Farrow, on 8 August 2015, is important. At 15:52, Ms Griffiths emailed him asking where Sir Elton had been playing tennis when he injured his leg and whether it had been at his hotel in Monaco or at a friend's house. Shortly afterwards she asked to which hospital he had gone. Mr Farrow replied, tersely, that Sir Elton had been playing at his own home. Later that day, in answer to Ms Griffiths' question, "*Was David F with him at hosp?*", Mr Farrow replied, "*No*"; and when she followed up with, "*Did David Furnish stay behind to look after the kids then?*", he replied, "*Yes*". At 18:39 he added, "*This is not that big of [a] story, honestly*".

1422. Ms Griffiths' evidence was that there had also been a brief telephone conversation with Mr Farrow between the email exchanges, which she said was consistent with the tenor of his communications generally. The call records showed one call of about 32 seconds on 8 August 2015. Ms Griffiths said that this "*sounds like a classic Gary Farrow phone*

call" and that he was someone who would be very direct, "*blast the explanation at me and hang up, or be in a rush*". She maintained that, brief though the call was, the notes she made were consistent with what he had said.

1423. It was put to Ms Griffiths in cross-examination that the information in her notes must in fact have come either from blagging the hospital to provide information or from listening in to voicemails. She denied that unequivocally. She said that she had never blagged a hospital and had never listened to a voicemail.

1424. This allegation had not been pleaded. Nor was it supported by any evidential foundation identifying: (i) whose voicemail was said to have been intercepted; (ii) what message was said to have contained the information; (iii) who was said to have intercepted it; or (iv) how the theory of hospital blagging could be reconciled with the fact that the resulting story was materially wrong in several respects.

1425. The cross-examination also addressed the fact that some of the detail in the Article did not appear in any equivalent form in the emails with Mr Farrow. Ms Griffiths maintained that the more detailed material in the notes came from her call with him. She also said that PRs frequently tried to downplay a negative story by giving some detail to make it accurate or less sensational and then saying it was "*not that big [a] story*". In that context, she said that Mr Farrow's reaction was entirely consistent with his trying to minimise a story that was already circulating.

1426. Mr Furnish's evidence tended to support that possibility. When shown the emails in cross-examination, he said he thought Mr Farrow was trying to "*spin the severity of what Elton was dealing with*" and to downplay the situation, observing that in some respects Mr Farrow's account was not accurate and did not reflect what had actually happened.

1427. There was also evidence from Sanchez Manning. In her witness statement she said that she did not initially remember working on the Article, but could see from emails between herself and Ms Griffiths that she was asked to help confirm reports online or elsewhere in the press that Sir Elton had been taken to hospital. She said that because she happened already to be near Monaco, someone on the News Desk likely asked her to speak to Ms Griffiths. She thought Ms Griffiths was asking her to confirm the likely name of the hospital and said that she had not been asked to go to any hospital. She said expressly that she did not go to any hospital in Monaco, did not obtain information from any hospital in Monaco, and would not have spent much time on the request. She thought that, if Suzy Chambers assisted, it might only have been to confirm that the relevant hospital in Monaco was the Princess Grace Hospital.

1428. No allegation of UIG was put to Ms Manning. Her evidence that she did not go to any hospital and did not obtain information from any hospital stood unchallenged.

1429. Finally, there were the payment records. In her first witness statement, Ms Griffiths said she had been told that three payments were made, relating to Elton John and an article, to Peter Allen, Susie Chambers and a confidential name. She said she did not remember speaking to any of them in relation to her 8 August 2015 piece. In her second witness statement, she clarified that the confidential name was David Barnes, that she did not recognise him, did not claim him as a confidential source, did not know what the £300 payment to him was for, and did not commission him for this Article. She also said she

only vaguely recalled Peter Allen from seeing him doing shifts on News and did not know Susie Chambers at all at the time of writing the Article.

1430. In cross-examination, Ms Griffiths pointed out that the cost code on the relevant payments was the News Desk cost code, not hers, and said that she would not have been authorised to make payments from that code. She did not accept that the payments showed that the information in the Article had been unlawfully obtained.

(c) The parties' submissions

1431. The Claimants submitted that the Article contained private medical information and details surrounding Sir Elton's admission to hospital. They emphasised that some of the information had not previously been published and submitted that this supported the inference that it had been obtained unlawfully. They also relied on the Agresso payments and submitted that they supported the inference that the information had been acquired by UIG.

1432. In closing submissions, the Claimants argued that the detail of the Article went beyond what was publicly available and that Mr Farrow's terse emails did not plausibly explain the lengthier and more detailed account found in the Article. They submitted that the Court should infer that the information was obtained either from someone with direct knowledge of Sir Elton's condition and treatment, or by unlawful means such as blagging or voicemail interception.

1433. Associated submitted that the claim in respect of this Article was not made out. It relied on the evidence of Ms Griffiths, the email chain with Mr Farrow, the notebook entries, the call records, and the earlier French reports. It submitted that almost all of the information in the Article could be traced either to public reporting or to Ms Griffiths' contemporaneous notes of her discussions with Mr Farrow. It submitted that the more likely explanation, stepping back, was that the initial tip came through the News Desk and that Mr Farrow either confirmed, corrected or reshaped it for publication.

1434. Associated further submitted that the inferential case based on blagging the hospital or intercepting voicemails was unpleaded and unsupported by evidence. It also submitted that that theory made little sense given that the Article was materially wrong in several important respects, including the claim that Sir Elton had injured himself while playing tennis, that the problem was in his leg or thigh, and that Mr Furnish had not accompanied him to hospital.

1435. As to the payments, Associated submitted that the payments relied upon were not shown to relate to this Article at all in any meaningful way, still less to show that information for it had been unlawfully obtained. It submitted that the fact that not every detail in the Article appeared in Ms Griffiths' notes was not a proper basis upon which to infer UIG.

(d) Discussion and conclusion

1436. In my judgment, the Claimants have failed to prove that this Article was the product of UIG.

1437. I begin with the pleaded case. The pleaded allegation did not identify any specific act of unlawful information gathering. It relied instead on two payments, recorded around

1 September 2015, and invited an inference from those payments that information used in the Article had been unlawfully obtained. That is a weak pleaded foundation for so serious an allegation.

1438. The more specific allegation advanced at trial – that the information in Ms Griffiths' notes had been obtained by blagging the hospital or by listening to voicemails – was neither pleaded nor foreshadowed. It was put for the first time in cross-examination, without any coherent article-specific evidential basis. There was no identification of any voicemail said to have been intercepted, no factual basis for alleging that hospital staff had been blagged, and no explanation of how that theory sat with the fact that the Article was wrong in key respects.

1439. The contemporaneous material points strongly away from any such inference. The documentary trail shows that there was already public reporting in the French press about Sir Elton's admission to hospital in Monaco. Those reports identified the Princess Grace Hospital, reported that he had arrived by ambulance, and floated differing explanations for the episode, including alcohol, a kidney problem and, in one report, an abscess. It is therefore wrong to treat the Article as springing from a vacuum or from information that could only have been obtained from the hospital.

1440. I accept Ms Griffiths' evidence that the News Desk had likely picked up the story from the French reports and asked her to stand it up by speaking to Gary Farrow. That account is consistent with the structure of her notes, the fact that she already had Mr Farrow's contact details, and the tone and timing of the email exchanges. It is also consistent with her role within the *Mail on Sunday*, in which the Diary team could be asked to use an existing contact to stand up a story that had first come to the attention of the News Desk.

1441. I also accept Ms Griffiths' evidence that Mr Farrow did in fact engage with the story and provide at least some of the information that appeared in the published piece. The email exchanges are consistent with that, and although his written replies were terse, they plainly confirmed some matters and answered her follow-up questions. I also accept her evidence that a brief, direct phone call with Mr Farrow was entirely consistent with Ms Griffiths' description of how he dealt with journalists. Mr Furnish's own evidence supported the proposition that Mr Farrow was trying to "*spin*" or downplay what had happened.

1442. Stepping back, I consider it more likely than not that the immediate source of the information used by Ms Griffiths was Mr Farrow, whether because he was himself the origin of the original briefing, or because he was asked to respond to a tip already circulating on the News Desk and in doing so supplied confirmation, correction and additional colour. I do not regard the fact that not every detail in the Article appears verbatim in the surviving notes or emails as a proper basis on which to infer UIG. Notes of this kind are not to be treated as a complete transcript of every conversation.

1443. The evidence of Ms Manning provides further support for the absence of UIG. She did not go to any hospital, did not obtain information from any hospital, and at most may have been asked to help identify the likely hospital from a video or by local knowledge. That evidence was not challenged.

1444. As for the payments, they do not materially advance the Claimants' case. Ms Griffiths did not recognise David Barnes, did not claim him as a source, and did not commission

him for this Article. She did not know Susie Chambers at the time, and the payment relating to her is, on Ms Manning's evidence, consistent with no more than local freelance assistance in identifying the Princess Grace Hospital. The entries were on a News Desk cost code, not Ms Griffiths'. In those circumstances, the payments do not support a proper inference that information in this Article was unlawfully obtained.

1445. Finally, and importantly, the Article was materially inaccurate in several respects. Sir Elton was not, on his account, taken ill on the tennis court; the infection was not in his leg or thigh but in a glute; and Mr Furnish did not stay behind with the children but went with him in the ambulance and to hospital. Those inaccuracies are much easier to reconcile with a story built from a public tip, French press reports and a spinning or downplaying response from a publicist than with the suggestion that the journalist obtained direct private medical information from hospital staff or through voicemail interception.

1446. Drawing these matters together, this is a case in which no specific act of UIG was pleaded; the more specific theories of hospital blagging and voicemail interception were first advanced at trial without proper notice or evidential foundation; the contemporaneous documentary record shows public reporting already existed; I accept Ms Griffiths' evidence that she spoke to Gary Farrow and that he supplied information used in the Article; and the payments do not justify any inference that information for this Article was unlawfully obtained. In those circumstances, I am not satisfied that the Claimants have discharged the burden of proving UIG. The claim based on this Article is therefore dismissed.

G: Limitation

(1) The issues to be resolved

1447. My conclusions in Section F mean that it is not strictly necessary to determine Associated's limitation defence, or the Claimants' answer to it based on alleged deliberate concealment under s.32 Limitation Act 1980.

1448. In some cases, however, where the findings made at trial provide a sufficient factual basis for doing so, it may be appropriate for the trial judge to go on to determine a limitation defence even though it is not strictly necessary for the disposal of the claim. That may be particularly so where an appellate court might take a different view on liability, with the result that unresolved limitation issues would otherwise require a re-trial on those issues. Whether to do so is a matter of judgment. Relevant considerations include the extent to which the necessary factual findings have already been made, whether resolving limitation would require the Court to decide issues that would otherwise not arise, and the likely cost and burden of a further trial if the liability findings were reversed.

1449. This is not such a case in respect of most of the Articles and incidents considered in Section F. In relation to those claims, I have generally rejected the Claimants' case because they have failed to prove the alleged act of UIG, or any relevant act of UIG for which Associated is legally responsible. In many instances, the Claimants' case did not identify, with any precision, the mechanism by which the private information was said to have been obtained. The rejection of the claim therefore leaves no sufficiently defined factual premise on which a limitation analysis could properly be undertaken.

1450. That matters because limitation under s.32 is not an abstract enquiry. As I explain below, the Court must identify the relevant right of action, the fact said to have been concealed, when that fact was discovered, and when it could with reasonable diligence have been discovered. Where the alleged act of UIG has not been proved, and where the mechanism by which it was said to have occurred remains undefined, the Court would have to posit a hypothetical form of wrongdoing before asking whether that hypothetical wrongdoing was time-barred. In many instances, that would not merely involve hypothesis; it would involve guesswork.

1451. I do not consider that to be an appropriate exercise. A Court should not invent a factual scenario, detached from findings actually made, in order to determine a limitation defence which does not call for decision. Nor would such an exercise provide any useful protection against a possible appeal. If an appellate court were to conclude that I was wrong to reject a particular claim on liability, the limitation analysis would depend on the factual basis on which that conclusion was reached. It would not necessarily correspond to any hypothetical scenario that I might now construct.

1452. There is, however, one exception. The Miskiw/Anderson emails are different. In that instance, the factual allegation is sufficiently clear. The Claimants' case is that the emails evidence an act, or acts, of unlawful information gathering for which Associated was responsible. I have rejected that case on the evidence. But the alleged incident itself is identifiable, and the limitation analysis does not require the Court to speculate about the mechanism of the alleged wrongdoing or to construct an assumed factual case that the Claimants did not prove.

1453. It is therefore possible, and in my judgment appropriate, to address limitation in relation to the Miskiw/Anderson emails on an alternative basis. The question is whether, if I were wrong in my conclusion that the Miskiw/Anderson emails do not establish unlawful information gathering for which Associated is responsible, the claims advanced by Sir Simon Hughes and Ms Frost Law would nevertheless be defeated by Associated's limitation defence.

1454. There are two further issues which I shall address. The first is connected to the Miskiw/Anderson emails: Associated's allegation of a so-called "*limitation camouflage*" scheme. The second is the allegation, advanced by the Claimants, that certain senior executives at Associated gave knowingly false evidence on oath to the Leveson Inquiry. The parties have referred to that allegation as the "*Leveson Lies*" allegation. I use that expression only as a convenient shorthand for the allegation; it should not be understood as accepting its premise.

1455. Strictly, it is not necessary to resolve either issue. The alleged limitation camouflage scheme is relevant, if at all, as part of Associated's case on whether Sir Simon Hughes and Ms Frost Law discovered, or could with reasonable diligence have discovered before 6 October 2016, the facts relevant to the claims they advance in respect of the Miskiw/Anderson emails. The Leveson allegation is still further removed from the issue which I am prepared to determine: whether the claims based on the Miskiw/Anderson emails would be defeated by limitation if, contrary to my conclusions on liability, Associated were responsible for the alleged UIG. The allegation is a general one. It does not, without more, identify a fact relevant to those particular rights of action which was deliberately concealed from those Claimants.

1456. In the ordinary course, and mindful of the warnings given by appellate courts against deciding issues which do not need to be decided, I would not have considered it necessary or appropriate to resolve either matter. I shall nevertheless do so, briefly and so far as I properly can, for three reasons. First, both involve serious allegations, particularly the allegation that witnesses gave knowingly false evidence to a public inquiry. Secondly, the allegations were pursued at trial, including in cross-examination, and have been the subject of public reporting. It would be unsatisfactory, if they can properly be addressed, to leave such allegations entirely unresolved. Thirdly, the parties have expressly invited me to determine them (no doubt reflecting the first and second considerations).

(2) Legal Principles

(a) Introduction

1457. Associated contends that the claims are statute-barred. For the reasons I have explained, I do not determine that defence across all claims. I set out the relevant principles because they are necessary to the alternative limitation analysis in relation to the Miskiw/Anderson emails, and to the limited further issues I address below. It is common ground that, unless the Claimants can bring themselves within s.32 Limitation Act 1980, the relevant claims are out of time. The route on which the Claimants rely is s.32(1)(b): they contend that facts relevant to their rights of action were deliberately concealed from them by Associated.

1458. I considered limitation at an earlier, interim stage of these proceedings: the Limitation Judgment (see [A1.1]-[A1.3]). That decision was concerned with whether Associated's limitation defence could properly be determined summarily, on the material then available. It was not, and could not be, a final determination of the limitation issues. The position at trial is different. The Court has now heard evidence and has had the benefit of a much fuller documentary record. In addition, the Supreme Court's decision in ***Potter -v- Canada Square Operations Ltd*** **[2024] AC 679** has clarified important aspects of s.32(1)(b). If, therefore, the conclusions reached below differ in any respect from the decision made at the earlier stage, that is because the Court is now performing a different exercise, on different material, and applying the law as authoritatively explained.

(b) The statutory framework and burden

1459. Section 2 of the Limitation Act 1980 provides that an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued. The ordinary limitation period is subject to the postponement provision in s.32.

1460. So far as material, s.32(1) provides that where, in the case of any action for which a period of limitation is prescribed by the Act:

> "(a) the action is based upon the fraud of the defendant; or
>
> (b) any fact relevant to the claimant's right of action has been deliberately concealed from the claimant by the defendant; or
>
> (c) the action is for relief from the consequences of a mistake,

> the period of limitation does not begin to run until the claimant has discovered the fraud, concealment or mistake, or could with reasonable diligence have discovered it."

1461. The burden is on each Claimant to establish the facts necessary to rely on s.32. That burden is not discharged by showing merely that Associated engaged in wrongdoing, or that any wrongdoing was difficult to detect. The statutory question is whether a fact relevant to the particular Claimant's right of action was deliberately concealed from that Claimant by Associated, and whether the Claimant did not discover, and could not with reasonable diligence have discovered, the relevant concealed fact or facts, before the date from which the ordinary limitation period would otherwise have expired: ***Paragon Finance plc -v- DB Thakerar & Co*** **[1999] 1 All ER 400, 418**; ***FII Group Test Claimants -v- HMRC*** **[2022] AC 1** [203], [209].

1462. Section 32 is an exception to the ordinary limitation regime. Its purpose is not to disapply limitation whenever a claimant did not in fact bring a claim earlier. It postpones time where, by reason of fraud, concealment or mistake, the claimant was unaware of the circumstances giving rise to the cause of action and could not with reasonable diligence have discovered them. The Supreme Court explained in ***FII*** that the purpose of s.32(1) is to ensure that a claimant is not disadvantaged, so far as limitation is concerned, by being unaware of the circumstances giving rise to the cause of action as a result of fraud, concealment or mistake: [213(2)], [213(13)]. It is therefore a limited statutory exception, not a general means of relieving a claimant from the consequences of delay.

1463. At the limitation stage, the Court does not decide whether the underlying claim will ultimately succeed. The question is whether, assuming the facts relied upon by the claimant to found the cause of action, the fraud, concealment or mistake had been discovered, or could with reasonable diligence have been discovered, at such a time as to render the claim time-barred. The existence of the cause of action as a verified fact is not the issue: ***FII*** [199]-[202], [213(15)]. That is why, where the underlying factual allegation has not been found proved, the Court must be cautious before undertaking an alternative limitation analysis on an assumed factual basis.

(c) *"Any fact relevant to the claimant's right of action"*

1464. The phrase "*any fact relevant to the claimant's right of action*" is to be construed narrowly. In ***Potter***, Lord Reed explained that the "*right of action*" means the right of action asserted by the claimant in the proceedings before the court, and that a "*fact relevant to the claimant's right of action*" means a fact without which the cause of action is incomplete: "*if the claimant can plead a claim without needing to know the fact in question, there would appear to be no good reason why the limitation period should not run*": [96].

1465. That formulation reflects the pre-existing Court of Appeal authority. In ***Arcadia Group Brands Ltd -v- Visa Inc*** **[2015] Bus LR 1362** [49], Sir Terence Etherton C identified the applicable principles as follows:

(1) a relevant fact is a fact without which the cause of action is incomplete;

(2) facts which merely improve prospects of success are not relevant facts; and

(3) facts bearing on a matter which is not a necessary ingredient of the cause of action, but which may provide a defence, are not relevant facts.

The same distinction was applied in ***Arcadia*** at [58]-[59], where the Court held that matters going to the strength of the claim, or to the commercial advantages and disadvantages of commencing proceedings, were not relevant facts within s.32(1)(b).

1466. It follows that it is not sufficient for a claimant to identify facts which would have strengthened the evidential case, made litigation more attractive, or improved the prospects of success. Nor is it sufficient to point to facts which answer an anticipated defence. The fact must be one which is needed to complete the cause of action asserted. As ***Arcadia*** makes clear at [64], facts which merely strengthen a cause of action or weaken a defence are irrelevant for s.32(1)(b) purposes.

1467. In these proceedings, that principle requires attention to the particular right of action advanced by each Claimant. The claims are not free-standing claims for "*unlawful information gathering*" as such. That phrase is a convenient shorthand for the alleged means by which private or confidential information was obtained. The pleaded causes of action are misuse of private information and, in Baroness Lawrence's case, breach of confidence. The relevant facts must therefore be facts needed to complete the particular pleaded cause of action, not merely broader facts about Associated's use of private investigators, journalistic culture, payment practices, or public denials. That approach is consistent with ***Potter*** [96] and ***Arcadia*** [49], [58]-[59], [64].

(d) The need to focus on the cause of action

1468. Limitation must be assessed with sufficient granularity. In ***Duke of Sussex -v- MGN Ltd*** **[2024] EMLR 5**, Fancourt J, applying ***Gulati -v- MGN Ltd*** **[2017] QB 149**, recognised that in misuse of private information litigation, each separate occasion of misuse by an act of unlawful information gathering may constitute a separate tort: [1391]. He drew the important distinction between acts of UIG and publication as separate categories of wrong. He also stated that, where a claim form comprises distinct causes of action, and a claimant knew more than six years before issue that he or she had a worthwhile claim in relation to one or more, but not others, the fact that some causes of action are time-barred does not necessarily mean that all others are: [1393].

1469. That does not mean that every alleged incident must always be treated as a separately pleaded cause of action irrespective of how the claim is structured. Fancourt J distinguished between claims pleaded as separate causes of action and claims pleaded by reference to categories of wrongs intended to capture all occasions within that category: ***Duke of Sussex -v- MGN*** [1393]-[1394].

1470. The significance for the present case is that the limitation question must be asked by reference to the relevant pleaded right of action and the facts said to have been concealed in relation to it. Knowledge sufficient to bring one type of claim does not necessarily constitute knowledge sufficient to bring another. Conversely, the fact that a Claimant did not yet know every detail of every alleged category of wrongdoing does not prevent time running for a claim which, on the facts known or reasonably discoverable, was already a worthwhile claim: ***Gemalto Holding BV -v- Infineon Technologies AG*** **[2023] Ch 169** [45]-[47], [53]; ***Duke of Sussex -v- MGN*** [1391]-[1394].

(e) Deliberate concealment under s.32(1)(b)

1471. The central modern authority is ***Potter***. Lord Reed held that "*concealment*" is not confined to active concealment. As a matter of ordinary English, to conceal means to keep something secret, either by taking active steps to hide it or by failing to disclose it: [65]. A plain reading of s.32(1)(b) encompasses both concealment by positive steps and concealment by non-disclosure: [67].

1472. It is not necessary, for s.32(1)(b), to establish a separate legal, equitable or contractual duty to disclose. The Supreme Court rejected the line of authority which had added requirements based on a duty to disclose or on knowledge of the fact's legal relevance: ***Potter*** [93]-[96], [98], [108]-[109]. What s.32(1)(b) requires is: (i) a fact relevant to the claimant's right of action; (ii) concealment of that fact from the claimant by the defendant, either by a positive act of concealment or by withholding relevant information; and (iii) an intention on the part of the defendant to conceal the fact or facts in question: ***Potter*** [109].

1473. The concealment must be deliberate. "*Deliberately*" does not mean recklessly. Lord Reed rejected the contention that recklessness is sufficient for s.32(1)(b): ***Potter*** [106]-[108]. The result of the act or omission – the concealment from the claimant – must be an intended result. The defendant must have considered whether to inform the claimant of the relevant fact and decided not to do so: ***Potter*** [108].

1474. The defendant need not know that the concealed fact is legally relevant to the claimant's right of action. The statutory phrase is concerned with deliberate concealment of the fact itself, not with the defendant's appreciation of the fact's legal significance: ***Potter*** [80], [96], [108]-[109].

1475. Where the defendant is a company, and the case depends on a particular state of mind, it is necessary to identify the individual or individuals whose state of mind is relied upon. That point was applied in the October Judgment (see [A1.13]-[A1.27]), in which permission to amend was refused because the proposed case did not allege deliberate conduct, did not identify the relevant individuals, and did not allege the specific intent required for concealment under s.32(1)(b): [44].

1476. Accordingly, the Claimants cannot satisfy s.32(1)(b) merely by showing that the alleged UIG was covert in nature, or that wrongdoing, if committed, was not apparent to them. Covert conduct may provide the factual setting in which concealment is alleged, but ***Potter*** requires identification of a relevant fact, concealment of that fact from the claimant, and an intention to conceal it: [108]-[109]. That is the legal basis on which Associated submits that, following ***Potter***, an allegation of "*concealment inherent in the acts of UIG*" is insufficient.

(f) Discovery: the "*worthwhile claim*" test

1477. If s.32 is engaged, the limitation period begins when the claimant discovers, or could with reasonable diligence have discovered, the fraud, concealment or mistake. The modern test is not whether the claimant had all the evidence needed to prove the claim, nor whether success was probable, nor whether every detail of the wrongdoing was known. The question is when the claimant knew, or could with reasonable diligence have known, enough to recognise that a worthwhile claim arose. That formulation

derives from ***FII*** at [209] and [213(13)], and was applied to deliberate concealment by the Court of Appeal in ***Gemalto*** at [45]-[47], [53].

1478. In ***FII***, the Supreme Court held that the relevant point is when the claimant knows, or could with reasonable diligence know, that he made a mistake with "*sufficient confidence to justify embarking on the preliminaries to the issue of a writ*", such as submitting a claim to the proposed defendant, taking advice and collecting evidence; or, equivalently, when he recognises that a worthwhile claim arises: ***FII*** [209], [213(13)].

1479. In ***Gemalto***, Sir Geoffrey Vos MR held that, after *FII*, time begins to run in a deliberate concealment case when the claimant recognises that it has a worthwhile claim. A worthwhile claim arises when a reasonable person could have a reasonable belief that the relevant wrong had occurred: [45]. The claimant is not entitled to delay the start of the limitation period until it has certainty that the claim will succeed: [46]. Nor is the question a complex balance of prospects, still less whether the claimant can show that success is more likely than not: [47]. The same distinction was expressed by the Court of Appeal in ***BAT Industries plc -v- Commissioners of Inland Revenue*** **[2025] EWCA Civ 1271** [53]-[54]: a "*worthwhile claim*" is not merely a claim worth investigating, but one which is worth raising or pursuing, in the sense that there are good grounds for supposing that a valid claim exists.

1480. A claim will not be worthwhile if it is pure speculation or if, pleaded on the basis of the details known, it would be struck out as disclosing no cause of action. But the claimant need not have chapter and verse about the details. In ***Gemalto***, the Court of Appeal held that the claimant could embark on the preliminaries to proceedings once it knew that there may have been a cartel and the identity of the participants, without knowing the details: [46]-[47], [50], [53].

1481. The same point has been applied in the phone-hacking/UIG context. In ***Various Claimants -v- MGN Ltd*** **[2026] EWHC 597 (Ch)**, Fancourt J stated that what is needed is knowledge of, or the ability to discover, sufficient facts to amount to a credible basis of claim, not the evidence needed at trial, nor all the facts about how the wrongdoer acted unlawfully towards the claimant; but facts which would produce a pleading liable to be struck out could not establish a reasonable belief in a worthwhile claim: [172].

(g) Reasonable diligence

1482. The words "*could with reasonable diligence have discovered*" are important and should not be diluted. In ***Paragon Finance plc v Thakerar*** **[1999] 1 All ER 400**, Millett LJ held that the question is not whether the claimant should have discovered the fraud sooner, but whether the claimant could with reasonable diligence have done so. The burden is on the claimant. The claimant must establish that he or she could not have discovered the fraud without exceptional measures which could not reasonably have been expected. The standard is how a person carrying on a business of the relevant kind would act if he had adequate but not unlimited staff and resources and were motivated by a reasonable but not excessive sense of urgency: 418b-d. That passage was endorsed as authoritative guidance in ***FII*** [203] and summarised again at [209(2)].

1483. The test has two related aspects. First, was there anything to put the claimant on notice of a need to investigate? Secondly, if so, what would a reasonably diligent investigation

have revealed? In ***OT Computers Ltd -v- Infineon Technologies AG*** **[2021] QB 1183**, Males LJ explained that these are not two separate statutory tests. There is a single statutory issue: whether the claimant could with reasonable diligence have discovered the concealment. But the question may have to be asked at two factual stages: (i) whether there was anything to put the claimant on notice of a need to investigate; and (ii) what a reasonably diligent investigation would then reveal: [47].

1484. At the first stage, the claimant must be reasonably attentive, so that he becomes aware, or is treated as becoming aware, of the things which a reasonably attentive person in his position would learn. At the second stage, he is taken to know those things which a reasonably diligent investigation would reveal. Both questions are questions of fact and depend on the evidence: ***OT Computers*** [47].

1485. The test is objective, but it is applied by reference to the position of the actual claimant, not a wholly hypothetical claimant. Males LJ made clear that "*could with reasonable diligence*" is objective in the sense that it is concerned with what the claimant could have learned, not merely what he did in fact learn; but the claimant remains the actual claimant: ***OT Computers*** [48]. Personal traits such as being slothful, naïve, shy, nervous, uncurious or ill-informed are not relevant: [38].

1486. In ***Duke of Sussex -v- MGN***, Fancourt J applied ***OT Computers*** in the media/UIG context. He held that the question remains what a reasonably attentive person in the claimant's circumstances, disregarding personal characteristics, would have been on notice of. The statutory criterion of reasonable diligence comprehends both attentiveness to the need to investigate and the nature of the investigations conducted: [1396]-[1397], [1415]. A claimant cannot answer the statutory question merely by saying that he or she did not in fact follow the news, lacked curiosity, had no interest in litigation, or did not wish to investigate. Whether the publication of private information, or other material in the public domain, was sufficient to put a particular claimant on notice that further investigation was required remains a fact-sensitive question.

1487. Where a claimant says that misleading source attribution, public denial, or another act of concealment put him or her off the scent, that may be relevant. But it depends on evidence that the claimant was indeed misled and acted differently as a result. Fancourt J held that, where a claimant has been misled into believing in a different cause of the injury, the claimant may not be expected to remain as attentive to another possible cause as a claimant who has not been misled; but he or she remains required to be as attentive as is reasonable in the circumstances: [1420]-[1421(e)].

1488. The burden remains on the claimant. Fancourt J identified the relevant questions in an individual claimant case, including whether the claimant concluded that someone other than the defendant was responsible, whether that caused the claimant to cease paying attention or investigating, whether the error was caused by the defendant's concealment, and what level of attentiveness to publicity was reasonably to be expected. He then stated that the onus of proof lies on the claimant, and that the questions are not answered or sidestepped by proving that the claimant was in fact unaware of relevant publicity: [1421]-[1423].

1489. In ***BGB Weston Ltd -v- In Media Trust SpA*** **[2024] EWHC 3277 (KB)**, Martin Spencer J emphasised that the statutory question is whether the claimant could with reasonable diligence have discovered the concealment, not whether it was reasonable

for the claimant not to have made a particular enquiry. To ask whether it was reasonable not to make the enquiry is to ask the wrong question: [24].

(h) Actual knowledge, forgotten knowledge and later concealment

1490. If the claimant actually knew the relevant fact, s.32(1)(b) cannot operate on the basis that the same fact was later concealed. In ***Sheldon -v- RHM Outhwaite (Underwriting Agencies) Ltd*** **[1996] AC 102, 144A**, Lord Browne-Wilkinson stated that, if the claimant knew the relevant facts, no subsequent act of the defendant could have concealed them from him.

1491. In ***Ezekiel***, Jonathan Parker LJ held that a claimant who was, at some point during the relevant period, aware of the fact which he alleges was subsequently concealed from him cannot rely on s.32(1)(b). The claimant cannot be heard to say that he was ignorant of a fact which he once knew: ***Ezekiel -v- Lehrer*** **[2002] EWCA Civ 16** [43]-[44]. Ward LJ framed the point at [2] in common-sense terms: one is to be treated as having knowledge of a fact which one has forgotten.

1492. The same principle applies to constructive discovery: ***Bocardo SA -v- Star Energy UK Onshore Ltd*** **[2008] EWHC 1756 (Ch)** [119]-[122], applied in ***BGB Weston***: [25]. It follows that later denials, explanations or reassurances do not restart the limitation period once the claimant has actual knowledge, or is fixed with constructive knowledge, of the facts sufficient to bring a worthwhile claim.

(i) Knowledge of lawyers, investigators and others

1493. A further issue concerns knowledge held by lawyers, investigators or others acting for, or in connection with, a claimant. The statutory question remains what the claimant discovered, or could with reasonable diligence have discovered. In applying that test, information held by persons acting for the claimant may be relevant in two ways. First, it may bear on what the claimant could with reasonable diligence have discovered, because a reasonably diligent investigation may involve instructing lawyers, taking advice, asking appropriate questions and collecting evidence: ***Paragon*** at 418; ***FII*** [209]; ***OT Computers*** [47]-[48]. Secondly, in an appropriate case, it may be said that the knowledge of an agent is to be attributed to the principal.

1494. The second proposition requires care. Section 32(1) expressly refers to the defendant's agent, but does not contain an equivalent general provision attributing to a claimant the knowledge of every agent or adviser. The authorities do not support any simple rule that all knowledge held by a claimant's solicitor, counsel, investigator or other adviser is automatically to be treated as the claimant's knowledge for the purposes of s.32. In ***Riyait -v- Dawes*** **[2018] EWCA Civ 593**, the Court of Appeal rejected an argument that knowledge held by solicitors was automatically to be attributed to the claimants for s.32 purposes, and emphasised the importance of factual context: [34]-[37]. The question is fact-sensitive and depends on the purpose for which the person was engaged, the scope of the retainer or authority, the nature of the information, and the relevance of that information to the statutory enquiry.

1495. Associated submits that, in this case, the knowledge of solicitors and counsel acting for the relevant Claimants, and the knowledge of members of what has been called the Research Team, should be attributed to the relevant Claimants. It relies, among other

matters, on ordinary principles of agency, on the proposition that a solicitor's knowledge is generally attributable to the client, and on cases in which a principal has been fixed with the knowledge of an agent who was engaged for the very purpose of acquiring or deploying the relevant knowledge. It relies, in particular, on ***Boyse International Ltd -v- NatWest Markets Plc*** **[2021] EWHC 1387 (Ch)** [41]-[43], and on the principles stated in *Bowstead on Agency* concerning circumstances in which knowledge acquired by an agent before the agency began may nevertheless be imputed to the principal. Associated also submits that the Research Team was engaged precisely because of its specialist knowledge and experience of UIG, and because of the documents and information it had obtained.

1496. The Claimants' answer, as I understand it, is that the question under s.32 remains claimant-specific: whether the particular Claimant had discovered, or could with reasonable diligence have discovered, the relevant concealed fact. They also rely on the line of authority cautioning against treating the knowledge of external advisers or arm's length agents as automatically attributable for s.32 purposes: ***Riyait*** [34]-[37]. That caution is also consistent with the proposition, accepted in ***IBM UK Ltd -v- LzLabs GmbH*** **[2025] EWHC 532 (TCC)** [1113]-[1114], that the authorities require care before attributing to a claimant the knowledge of external and arm's length advisers for the purposes of s.32.

1497. In my judgment, the correct approach is not to adopt an automatic rule in either direction. The Court must ask whether, on the facts, the person whose knowledge is relied upon was acting for the claimant, and within the scope of an authority or role sufficiently connected with investigating, advising upon or advancing the relevant claim, such that the information held by that person should be treated either as knowledge attributable to the claimant or as information which the claimant could with reasonable diligence have obtained. That approach is consistent with ***Riyait*** [36], ***Boyse*** [41]-[43], and the objective but claimant-specific test in ***OT Computers*** [47]-[48].

1498. In most cases, it will be unnecessary to decide the point at a high level of abstraction. The practical question will be whether the relevant information was available to the claimant, through lawyers, investigators, researchers or others acting on the claimant's behalf, in circumstances in which a reasonably diligent claimant would have obtained and acted upon it. Where attribution is alleged, the party relying on it must identify the person whose knowledge is to be attributed, the relationship or authority relied upon, the knowledge said to have been held, and why that knowledge is properly attributable to the relevant claimant for the purposes of s.32.

(j) Application to these proceedings

1499. The following propositions therefore govern the limitation analysis in this case.

(1) Each Claimant bears the burden of establishing that s.32 postpones the running of time: ***Paragon*** at 418; ***FII*** [203], [209].

(2) The Court must identify the particular right of action relied upon and the fact said to have been concealed. A relevant fact is a fact without which the pleaded cause of action is incomplete; facts which merely strengthen the case, improve prospects of success or weaken a defence are not enough: ***Potter*** [96]; ***Arcadia*** [49], [58]-[59], [64].

(3) Limitation must be assessed by reference to the pleaded right of action, and with sufficient granularity where distinct incidents or causes of action are advanced: ***Duke of Sussex -v- MGN*** [1391]-[1394].

(4) Concealment under s.32(1)(b) may be by active steps or by withholding information. A separate duty to disclose is not required. But the concealment must be deliberate, in the sense that the concealment from the claimant was an intended result: ***Potter*** [65], [67], [108]-[109].

(5) Recklessness is insufficient for s.32(1)(b). The defendant must have intended to conceal the relevant fact: ***Potter*** [106]-[109].

(6) The question whether there has been deliberate concealment is distinct from the later question whether any concealment, denial or source attribution affected what the claimant discovered or could with reasonable diligence have discovered. The former is the threshold requirement under s.32(1)(b); the latter arises when determining actual or constructive discovery: ***Potter*** [108]-[109]; ***FII*** [209], [213(13)]; ***OT Computers*** [47]; ***Duke of Sussex -v- MGN*** [1420]-[1423].

(7) Discovery does not require proof of every evidential detail. Time starts when the claimant knew, or could with reasonable diligence have known, enough to recognise a worthwhile claim: ***FII*** [209], [213(13)]; ***Gemalto*** [45]-[47], [53]; ***Various Claimants -v- MGN Ltd*** **[2026] EWHC 597 (Ch)** [172].

(8) A worthwhile claim is not one that the claimant knows will succeed. It is a claim which is more than speculation and which could properly be advanced; if a pleading based on the known facts would be struck out, the claimant has not yet discovered a worthwhile claim: ***Gemalto*** [45]-[47], [53]; ***Various Claimants -v- MGN Ltd*** **[2026] EWHC 597 (Ch)** [172].

(9) Reasonable diligence is objective but contextual. The claimant is treated as aware of what a reasonably attentive person in the claimant's actual circumstances would have learned, and then of what a reasonably diligent investigation would have revealed: ***OT Computers*** [38], [47]-[49]; ***Duke of Sussex -v- MGN*** [1396]-[1397], [1415].

(10) Personal characteristics such as lack of curiosity, lack of interest, naivety, inattentiveness, or failure to follow publicity do not answer the statutory question. The onus remains on the claimant to prove that he or she could not with reasonable diligence have discovered the relevant facts: ***OT Computers*** [38], [47]; ***Duke of Sussex v MGN*** [1415]-[1423].

(11) If misleading source attribution or another form of concealment is said to have put a claimant off the scent, that may be relevant; but it must be proved that the claimant was in fact misled and that this affected what it was reasonable to expect by way of attentiveness or investigation: ***Duke of Sussex -v- MGN*** [1411]-[1415], [1420]-[1423].

(12) Once a claimant has actual knowledge, or is fixed with constructive knowledge, of facts sufficient to bring a worthwhile claim, later concealment, denial or

reassurance does not restart time: ***Sheldon*** at 144A, as applied in ***Ezekiel*** [43]-[45]; ***BGB Weston*** [25].

(13) Knowledge held by lawyers, investigators, researchers or others acting for or in connection with a claimant may be relevant to what the claimant discovered or could with reasonable diligence have discovered. Whether such knowledge is to be attributed to the claimant is not governed by an automatic rule. It depends on the facts, including the nature and scope of the relationship, the purpose for which the person was engaged, the information held, and the connection between that information and the relevant right of action: ***Riyait*** [34]-[37]; ***Boyse*** [41]-[43]; ***FII*** [209]; ***OT Computers*** [47]-[48].

(3) The Miskiw/Anderson Emails

1500. My conclusions on liability are set out in Section F(36) (see [964]-[1014] above). In summary, I have dismissed the claims brought by Sir Simon Hughes and Ms Frost Law on the Miskiw/Anderson Emails because the Claimants failed to prove that, when Mr Anderson received and responded to those emails, in April 2006, he knew that the information in question was the product of voicemail interception or other UIG.

1501. I am satisfied that it is appropriate to go on to consider whether, if I were wrong about that issue, the claims would nevertheless have been defeated by Associated's limitation defence. That is because the factual issue is sufficiently well defined to enable an alternative assumption to be made for the purposes of resolving the limitation defence: namely, that Mr Anderson did know that the information in the emails with Greg Miskiw was the product of voicemail interception.

(a) The alternative assumption and the relevant facts

1502. On that alternative assumption, the relevant limitation question is a narrow one. It is not necessary to decide whether either Sir Simon Hughes or Ms Frost Law knew every evidential detail now relied upon. Nor is it necessary to decide whether either of them knew that a claim would succeed. The question is whether, before 6 October 2016, each had discovered, or could with reasonable diligence have discovered, facts sufficient to recognise a worthwhile claim based on the Miskiw/Anderson Emails.

1503. The relevant facts for this purpose were these. First, in April 2006, Mr Miskiw was communicating with Mr Anderson, then of the *Mail on Sunday*, about Sir Simon Hughes and HJK, and about Ms Frost Law and Jade Schmidt. Secondly, the emails concerning Ms Frost Law contained material which, on the Claimants' case, read as the product of voicemail interception. Thirdly, Mr Anderson responded to the material, including by saying that "*we're going to give her a knock*". Fourthly, there was a payment record referring to "*Simon Hughes tip and Sadie Frost tip*". Fifthly, on the alternative assumption I am now making, Mr Anderson, for whose actions Associated was liable, knew that the information being provided to him by Mr Miskiw was the product of voicemail interception or other UIG.

1504. Those facts, if known, were sufficient to support a worthwhile claim by each of Sir Simon Hughes and Ms Frost Law. In Sir Simon's case, the claim would not have depended upon proof of a published article. The pleaded complaint was that private information about him and HJK was obtained unlawfully and passed to Associated

through Mr Miskiw. That is reflected in Sir Simon's Particulars of Claim, which plead that Mr Mulcaire obtained private information concerning HJK, that the information was passed to the Mail on Sunday through Mr Miskiw to Mr Anderson, and that Associated paid Mr Miskiw for the "*Simon Hughes tip*". In Ms Frost Law's case, the emails themselves supplied the link between the private information, Mr Miskiw, Mr Anderson and the *Mail on Sunday*. In each case, the claim would have been more than speculative. It would have been a claim which could properly have been advanced.

(b) The parties' submissions

1505. Associated's case is that both Sir Simon Hughes and Ms Frost Law had actual knowledge before 6 October 2016. It submits that Dr Harris and Mr Johnson had obtained and understood the significance of the Miskiw/Anderson Emails by February 2016; that the April 2016 meetings were convened precisely because those emails showed potential claims against Associated; and that the contemporaneous documents before and after those meetings demonstrate that the substance of the emails was communicated to Sir Simon and Ms Frost Law. Associated submits that the Claimants' witnesses have attempted, in their oral evidence, to minimise or compartmentalise the April 2016 events, but that the documents reveal a single course of conduct in which journalistic investigation and the development of potential claims were proceeding together.

1506. Associated further submits that, if the Court is not satisfied that Sir Simon and Ms Frost Law had actual knowledge in April 2016, each had constructive knowledge. The substance of the Miskiw/Anderson material was in the hands of Dr Harris, Mr Johnson and others working with them. Those individuals were not strangers. They were actively communicating with the relevant Claimants, and in Ms Frost Law's case with her solicitor, Mr Thomson. Associated submits that the relevant information was plainly available on reasonable enquiry.

1507. Finally, Associated relies on articles published by Byline and, in particular, the email of 11 July 2019 from Dr Harris to Sir Simon Hughes. Associated submits that the email records, in clear terms, a strategy that Byline articles should be used to create or reinforce a "*watershed*" date so as to deter a limitation defence. Associated describes this as a limitation camouflage scheme. It submits that events subsequently unfolded in accordance with that strategy: articles were published in Byline; Sir Simon had advance sight of the proposed articles and input into the timing of publication; and those articles were then relied upon in his pleading as the basis for the date on which he first knew he had a claim.

1508. The Claimants' answer is that neither Sir Simon nor Ms Frost Law was shown or told about the Miskiw/Anderson Emails in April 2016. They submit that the meetings were not litigation meetings in any meaningful sense, but were connected with Dr Harris' and Hacked Off's wider work concerning press wrongdoing, including possible Leveson 2 issues. They also submit that Mr Johnson's material was journalistic material, and that his consent would have been required before it could be shown to potential claimants. The Claimants rely on the evidence of Dr Harris, Mr Johnson, Mr Thomson, Sir Simon Hughes and Ms Frost Law, and submit that none of them gave reliable evidence that the Miskiw/Anderson Emails were shown or their substance explained.

1509. The Claimants also say that the 2019 Byline material has been misunderstood. They submit that there was no scheme to manufacture a limitation date. Dr Harris' email of 11 July 2019 should be understood, they say, as a loosely expressed lay summary of the fact that publication of articles might bring matters into the public domain and might therefore provide a natural explanation of when a claimant first learned enough to investigate a claim. They submit that there was nothing improper in that and that no solicitor at Atkins Thomson gave advice to conceal the true limitation position.

(c) The approach to the evidence

1510. In approaching these issues, I bear in mind the general caution I have already expressed about witness memory. The April 2016 meetings took place nearly ten years before the witnesses gave evidence. They were not formal meetings of which any full attendance note has been produced. Several witnesses were reconstructing events from documents, from their present understanding of the litigation, and from the way in which the issues have since developed. I do not approach their evidence on the footing that an inaccurate present recollection necessarily involves dishonesty. But where there is a conflict between present recollection, or the absence of recollection, and contemporaneous documents, the documents are likely to be the more reliable guide.

1511. I also distinguish between three different forms of evidence. First, some witnesses did not have a real independent recollection of the meetings. Secondly, some witnesses gave evidence to the effect that they did not recall the Miskiw/Anderson Emails being shown or discussed. Thirdly, some evidence went further and suggested that, because a meeting was brief or informal, or because no file was opened or note made, nothing of substance can have been shown or discussed. The third form of evidence is the least persuasive. The absence of a file note is a relevant circumstance, but it cannot displace contemporaneous documents showing what the meetings were about and what follow-up steps were agreed.

1512. I also reject the attempted sharp distinction between "*journalistic*" and "*litigation*" activity which featured in parts of the Claimants' evidence and submissions. As I have explained in Appendix 2 in relation to Mr Johnson ([A2.72]), there was an artificiality in his attempt to maintain a rigid separation between journalism and litigation. The contemporaneous documents do not support that distinction. Rather, they demonstrate a single course of conduct, pursued over time, which combined both journalistic and litigation objectives. Those objectives may have progressed at different speeds and may not always have been identical. But the documents do not suggest any material divergence, still less the kind of strict separation advanced in parts of the oral evidence.

1513. That matters because one theme of the Claimants' case was that Sir Simon Hughes and Ms Frost Law would not have been shown the Miskiw/Anderson Emails because they were, in some sense, Mr Johnson's journalistic property and his consent would have been required before they could be shown to potential claimants. I do not accept that this provides a satisfactory answer to Associated's case. First, there is no support in the contemporaneous documents for any such rigid rule. Secondly, even if there had been some sensitivity about the documents themselves, that would not have prevented Dr Harris, Mr Johnson or others from communicating the substance of the material. Thirdly, the documents show that Dr Harris did communicate with Sir Simon and Ms Frost Law about potential claims. The real question is therefore not whether the

email chain was physically handed over, but whether the substance of the relevant facts was communicated. For the reasons that follow, I find that it was.

(d) The 2006 emails and payment evidence

1514. The Miskiw/Anderson Emails are not equivocal documents. They show Mr Miskiw offering and supplying information to Mr Anderson about two subjects: first, Sir Simon Hughes and HJK; secondly, Ms Frost Law and Jade Schmidt. The sequence begins with Mr Miskiw asking whether Mr Anderson had made progress with "*the Simon Hughes boyfriend*". Mr Anderson replied that they had been trying for a photograph but without success. Mr Miskiw then said that his source was putting pressure on him and asked whether Mr Anderson was interested in Sadie Frost. The later emails supplied detailed information about Jade Schmidt and Ms Frost Law, including information which, on the Claimants' case, could only realistically have come from voicemail interception. Mr Anderson answered: "*thanks greg - we're going to give her a knock*". The contemporaneous documents certainly demonstrate that Mr Johnson and Dr Harris both believed, in April 2016, that the Miskiw/Anderson Emails showed that the *Mail on Sunday* had received the product of voicemail interception carried out by Glenn Mulcaire.

1515. The later material reinforced the significance of the emails. The 2019 victim memorandum concerning Sir Simon stated that its purpose was to demonstrate that Sir Simon and HJK were victims of phone hacking and other unlawful information gathering on behalf of the *Mail on Sunday*. It identified, as one category of evidence, the Miskiw/Anderson Emails, said to have been sent to Mr Johnson on 19 February 2016. It also identified the payment record to Mr Miskiw and Mr Mulcaire material. That document post-dates the April 2016 meeting and does not prove what was said then. But it shows the way in which Dr Harris, Mr Johnson and those working with them understood the significance of the material: it was evidence being deployed to demonstrate a possible claim by Sir Simon against Associated.

1516. The payment evidence is also significant. It is not merely a background accounting document. It links the two subjects of the email chain – "*Simon Hughes*" and "*Sadie Frost*" – with a payment to Mr Miskiw. On the alternative assumption I am making, the emails and the payment record together provided the essential factual bridge between Mr Mulcaire/Mr Miskiw, Mr Anderson, the *Mail on Sunday* and each of the two Claimants.

(e) Sir Simon Hughes: actual knowledge

1517. I accept that Sir Simon's earlier understanding, in 2006, 2011 and 2012, was principally shaped by NGN, the *News of the World* and *The Sun*. He had been "*outed*" by *The Sun* in January 2006. In October 2006, he was told by police officers that he had been the victim of voicemail interception. In 2011, he was shown Mulcaire material which he understood as pointing to journalists at the *News of the World*, including Ian Edmondson, Greg Miskiw and Neville Thurlbeck. NGN then made admissions in his claim. That explains why, without more, Sir Simon would not necessarily have appreciated that he had a claim against Associated.

1518. That therefore makes the April 2016 material important. The issue is not whether, from the 2011 MPS disclosure or the NGN litigation alone, Sir Simon should have

appreciated that he had a claim against Associated. The issue is whether, in April 2016, he was told about additional material connecting Mr Miskiw and Mr Anderson of the *Mail on Sunday*.

1519. The contemporaneous documents strongly support Associated's case on that issue. By April 2016, Dr Harris and Mr Johnson had the Miskiw/Anderson Emails. Those emails were not general background material. They were the very documents that supplied the connection between Mr Miskiw and Mr Anderson of the *Mail on Sunday*. They were directly concerned with Sir Simon and HJK. Their significance lay in that connection.

1520. Sir Simon's oral evidence did not provide a convincing answer to this documentary case. I accept that he did not now have a detailed memory of everything said at the April 2016 meeting. I also accept that, in light of the passage of time and the complexity of events, he may genuinely have reconstructed his recollection by reference to what he later understood. But his evidence did not displace the inference from the documents that the substance of the Miskiw/Anderson material was communicated to him.

1521. I also accept that Sir Simon may not have appreciated the full legal significance of the material. But that is not the test. The statutory question is whether he had discovered facts sufficient to recognise a worthwhile claim, not whether he could draft the Particulars of Claim or evaluate all possible answers to it. Once he was told that Mr Miskiw had been communicating with Mr Anderson of the *Mail on Sunday* about HJK and that the material connected with Mr Mulcaire's unlawful activity, the claim was more than speculative.

1522. In my judgment, the proper inference from the contemporaneous documents is that, at or around the April 2016 meeting, Sir Simon was told the substance of the Miskiw/Anderson material. I put the finding in that way deliberately. It is unnecessary to decide whether every page of the email chain was physically shown to him. What matters is whether the substance of the relevant facts was communicated. I find that it was.

1523. That conclusion is reinforced by the improbability of the contrary. Dr Harris and Mr Johnson had material which, on their understanding, connected the *Mail on Sunday* to the use of information deriving from Mr Mulcaire and Mr Miskiw in relation to Sir Simon and HJK. They were actively investigating possible claims against Associated. The meeting with Sir Simon was not an abstract discussion about press regulation or Leveson 2. The contemporaneous documents show that Dr Harris, particularly, was excited by the evidence he believed had been uncovered and the potential it had to be used in litigation against Associated. Against that background, it is inherently unlikely that the very material connecting Sir Simon's case to Associated would not have been mentioned.

1524. I therefore find that Sir Simon had actual knowledge, before 6 October 2016, of facts sufficient to recognise a worthwhile claim based on the Miskiw/Anderson Emails.

(f) Sir Simon Hughes: constructive knowledge

1525. If I were wrong about actual knowledge, I would find that Sir Simon could with reasonable diligence have discovered the same facts. The material was in the hands of

Dr Harris and Mr Johnson, who were working to investigate and develop possible claims. There is no realistic basis for concluding that, had Sir Simon or his solicitor asked for the material underlying the possible *Mail on Sunday* claim, it would not have been provided or at least explained in sufficient detail. The suggested distinction between journalism and litigation does not alter that conclusion. Even if Mr Johnson had wished to retain control of the documents themselves, that would not have prevented the relevant information from being communicated. In any event, the contemporaneous documents show that the material was being used for both purposes.

(g) Ms Frost Law: actual knowledge

1526. The position in relation to Ms Frost Law is, in my judgment, stronger. The contemporaneous documents around the April 2016 meeting are specific and direct. The meeting took place on 14 April 2016. Mr Thomson's evidence is that it was brief and informal, that he does not recall any documents being shown to him or to Ms Frost Law, and that Dr Harris wanted to investigate further. He also said that Dr Harris was unable to reveal evidence because he needed to investigate first. I accept that this is Mr Thomson's honest present recollection. My findings are set out in Appendix 2 (see [A2.98]-[A2.101]). But I do not accept it as an accurate account of the substance of what was discussed, insofar as it suggests that the meeting did not include communication of the substance of the Miskiw/Anderson material.

1527. The most important document is Dr Harris' email of 25 April 2016, subject "*Possible Mail on Sunday hacking of Sadie and Kate*". It referred to "*the actions we agreed at our meeting with Mark T the week before last*". Mr Thomson was copied into the email. The email stated that there was "*no action*" for Ms Frost Law "*for the moment*", but "*just on Mark and ourselves*". The actions included article research at the British Library to see whether a relevant *Mail on Sunday* or *Daily Mail* article could be found in March to June 2006; Mr Thomson speaking to Amanda Owen about permission to share relevant NGN material for the purpose of seeing whether there was *Mail* hacking of Amanda or Sadie; Ms Frost Law giving permission to Mr Thomson to disclose her *News of the World* material to Dr Harris and Ms Ritchie; Mr Thomson giving Dr Harris the draft pleading for Ms Frost Law's *News of the World* case; and Dr Harris showing Ms Frost Law's Mulcaire pages to Mr Mulcaire.

1528. That email is inconsistent with the suggestion that the meeting was merely a loose or general discussion. It records agreed steps directed specifically to possible *Mail on Sunday* hacking of Ms Frost Law. The reference to March to June 2006 was not accidental. It corresponds with the period of the Miskiw/Anderson Emails. The reference to Ms Frost Law's *News of the World* material and Mulcaire pages also makes sense only in the context of seeking to connect NGN/Mulcaire material with possible Associated wrongdoing.

1529. I attach particular significance to the fact that Mr Thomson was copied to the email. It is not simply evidence of what Dr Harris thought. It is a contemporaneous record sent to Ms Frost Law and copied to her solicitor, recording steps which Dr Harris said had been agreed at the meeting with "*Mark T*". If the email materially misstated what had been agreed, one would have expected some correction. None has been identified.

1530. A later memo from Mr Johnson points in the same direction. It records, in the immediate aftermath of the April 2016 meeting, that the evidence which had been unearthed was

being considered in the context of a possible claim against the *Mail on Sunday*. The document is not a formal note of the meeting. Its significance is that it forms part of the same contemporaneous chain. Dr Harris, Mr Johnson and those working with them were treating the Ms Frost Law material as evidence of possible *Mail on Sunday* hacking and were taking steps with Ms Frost Law and Mr Thomson directed to that end.

1531. The evidence of Ms Frost Law does not lead me to a different conclusion. I accept that she may not now have a detailed recollection of what was said at the meeting. I also accept that, as a lay client, she may not have appreciated the legal significance of each component of the information discussed. But the statutory question is not whether she could formulate a complete pleading or evaluate the prospects of success as a lawyer would. It is whether she knew enough to recognise a worthwhile claim.

1532. In my judgment, by the end of April 2016, Ms Frost Law had been told enough. She knew, through the April meeting and the follow-up communications, that Dr Harris and those working with him were investigating possible Mail on Sunday hacking of her. The agreed actions were directed to the 2006 period and to the same subject matter as the Miskiw/Anderson Emails. Mr Thomson, her solicitor, was directly involved in those agreed steps. That is sufficient for actual knowledge.

1533. I do not accept the submission that the meeting was merely for Leveson 2 campaigning or general information-gathering. That was no doubt part of the wider background to Dr Harris' and Hacked Off's activities. But it does not explain the specificity of the follow-up steps recorded in the email of 25 April 2016, nor the involvement of Mr Thomson in providing Ms Frost Law's *News of the World* material and draft pleading, nor the focus on possible *Mail on Sunday* hacking in the relevant 2006 period.

(h) Ms Frost Law: constructive knowledge

1534. If I were wrong about actual knowledge, I would find that Ms Frost Law had constructive knowledge. A reasonably diligent claimant in her position, acting through her solicitor, could have obtained the relevant material from Dr Harris, Mr Johnson and Ms Ritchie. Mr Thomson was present at the meeting. He was copied into the follow-up email. He was identified as having actions to take. The relevant information was therefore not in the hands of a remote third party. It was held by, or available from, people who were actively engaged in the investigation of a possible *Mail on Sunday* claim and who were communicating directly with Ms Frost Law and her solicitor.

1535. I do not need to adopt any automatic rule that the knowledge of every adviser is knowledge of the client. Nor do I do so. My finding is narrower. On the facts of this case, the information was available to Ms Frost Law through the persons actively assisting in the investigation and development of a possible claim. With reasonable diligence, she could have obtained the substance of the Miskiw/Anderson material before 6 October 2016. Certainly, I find that there was no impediment to her doing so.

1536. The findings I have made in respect of Ms Frost Law also support the conclusions that I have reached in respect of Sir Simon Hughes. The contemporaneous emails show that, at the meeting on 14 April 2016, there was detailed and specific consideration of Ms Frost Law's potential claim arising from the Miskiw/Anderson Emails. There is no reason why any different approach would have been adopted by Dr Harris in relation to communications with Sir Simon Hughes at the meeting with him. So far as Dr Harris

was concerned, they were both regarded as key potential claimants in litigation he was anxious to see pursued against Associated.

(i) The limitation camouflage allegations

1537. I turn to Associated's allegations that there were what it described as limitation camouflage schemes. These allegations are serious and I approach them with appropriate care. Associated's case, in broad terms, is that Dr Harris, Mr Johnson and others understood that there was a limitation difficulty because potential claimants had, or might have, known of facts relevant to claims against Associated at a point which, depending on when any claims were issued, might give rise to limitation problems. It submits that the strategy adopted was to publish articles in Byline and then rely on those articles as the point at which the relevant claimant first knew enough to bring a claim.

1538. It is necessary to identify precisely how the allegations are pleaded. In Sir Simon Hughes' case, Associated pleads that the "*Hughes Limitation Camouflage Scheme*" was a scheme proposed to him by Dr Harris on or around 11 July 2019, on the advice of Mark Thomson or, in the alternative, another solicitor at Atkins Thomson whose identity was then unknown to Associated. The pleaded case is that Dr Harris, Mr Johnson and the relevant solicitor sought to conceal the true limitation position from the Court; that the existence of the scheme is to be inferred from Dr Harris' email of 11 July 2019 and Mr Johnson's response sent later the same day; that the scheme was adopted and implemented by Sir Simon Hughes in paragraph 22 of his Reply; and that the existence and implementation of the scheme is relevant to whether Sir Simon Hughes can prove that the limitation period was extended under s.32(1)(b). That is the pleaded allegation in Sir Simon's case.

1539. In Ms Frost Law's case, Associated pleads a separate "*Frost Law Limitation Camouflage Scheme*". That allegation is said to arise from a scheme agreed between Mr Johnson and Mr Thomson, pursuant to which they sought to conceal the true limitation position from the Court. The existence of that scheme is said to be inferred from the emails identified in Annex A to the Rejoinder, and Associated pleads that the scheme was adopted and implemented by Ms Frost Law in paragraphs 20–21 of her Reply. Associated also pleads that the existence and implementation of the Hughes and Frost Law schemes is relevant to whether each claimant can prove that the limitation period was extended under s.32(1)(b).

1540. Although the two pleaded allegations are connected, they are not identical. The Hughes allegation is centred on a single explicit email sent by Dr Harris to Sir Simon on 11 July 2019, and Mr Johnson's response enclosing draft articles. The Frost Law allegation is based on a series of emails between Mr Johnson and Mr Thomson in October and December 2018, none of which was sent to Ms Frost Law. I therefore consider them separately.

1541. The central document in relation to Sir Simon Hughes is Dr Harris' email of 11 July 2019, sent at 12.56 to Sir Simon Hughes, copied to Mr Johnson, headed "*Daily mail hacking*". In that email, Dr Harris stated:

> "As you know [Mark Thomson] is progressing your Sun claim and – hopefully – keeping me in the loop. That will be done as a group with Coogs, Hugh G, Sienna,

> Gazza and others so you will not be the main story (despite your obvious celebrity!).
>
> The Mail hacking claims are being developed, and will be ready to launch soon. To deter the Mail from arguing 'limitation' (ie you knew about this 6 years ago) Atkins Thomson think it best for stories to be written in Byline which can be referred as the basis for claims being raised.
>
> Graham – copied in – has already done a number of Mail stories which can be found here https://www.bylineinvestigates.com/mail. The hacking ones are listed under 'voiceMail' (gerrit?!). These include stories on Sadie Frost and Heather Mills
>
> He has written a story on your Mail case (from public domain and legally sourced material) to follow in the series. It is his approach to check with the target of the Mail the text of the story in case you have ways you rather it was phrased. I have asked him to send you the draft after it has been legalled. Of course, it is not ideal to re-air these matters but the website is not one that the papers care to report from, so there is very little visibility. The virtue is that it puts the material into the public domain which will help the litigation".

1542. A short time after that email, Mr Johnson sent an email to Dr Harris and Sir Simon Hughes, attaching three draft articles. The email stated:

> "Hi Simon,
>
> How's it going?
>
> I attach THREE draft stories: Part 1, Part 2, Part 3 of an investigative series, about how you were hacked by the MoS - and The Sun and the NoTW - at the same time.
>
> Please note, that in January this year, we ran similar series about Heather Mills and her associates, Sadie Frost and MoS columnist/ hacking mastermind Tina Weaver, who was summarily sacked by Lord Rothermere, personally.
>
> I would like to publish the stories about you on bylineinvestigations.com and byline.com over two or three weeks.
>
> Is that OK?
>
> You may change the copy, add or delete as you see fit, in track changes, if you will.
>
> In addition, you may consider supplying a comment for each story.
>
> Please let me know what you think".

1543. The Claimants deny that there was any such scheme. They submit that Dr Harris was not suggesting that a false limitation date should be created, and that no lawyer at Atkins Thomson advised such a course. They rely on Sir Simon Hughes' evidence that he did not give the point considered thought because, shortly after receiving the draft articles, he was told to ignore them as matters were not yet ready. They also rely on Dr Harris' evidence that he was doing no more than identifying publication as a clear point at

which a claimant might be put on notice of a potential claim, and on Mr Heath's evidence that no advice of the kind attributed to Atkins Thomson was given.

1544. In my judgment, Dr Harris' email plainly and reliably records his understanding that someone at Atkins Thomson had advised, or at least suggested, that publication in Byline could be used as a way of deterring a limitation argument. I do not accept Dr Harris' attempt in evidence to explain that email away as harmless shorthand. The words are clear. They state both an objective – "*to deter the Mail from arguing 'limitation'*" – and the proposed means of achieving it: that stories should be written in Byline which could then be "*referred [to] as the basis for claims being raised*". The parenthetical explanation – "*ie you knew about this 6 years ago*" – shows that Dr Harris understood the nature of the limitation difficulty. The final sentence reinforces that conclusion: the "*virtue*" of publication was said to be that it would put the material into the public domain, which would "*help the litigation*". The email was therefore not merely explaining the ordinary forensic consequence of publication; it was proposing publication as a means of improving the prospects of discouraging, or if necessary blunting, any limitation defence.

1545. Dr Harris' answers in cross-examination did not provide a satisfactory explanation for that language. When asked whether someone at Atkins Thomson had suggested what he had written, his answer was: "*Not as it's written*". He identified Mr Heath as the person with whom he said he had spoken, and said that the conversation had taken place on the day the email was sent. He said that Mr Heath had explained that publication would define the point at which actual knowledge was obtained. Dr Harris then sought to recast the email as a badly expressed attempt to convey that point. He variously described the sentence as "*clumsily*" put, "*nonsense*", and "*a badly written line*". I accept that the sentence may not have been drafted with legal precision. But I do not accept that it was merely an innocent or immaterial misdescription of the point being conveyed. The substance of the email was that Byline publication was being proposed as a way of assisting the presentation of limitation by enabling a later public event to be relied upon as the apparent point at which the claim crystallised.

1546. I also take into account the nature of Dr Harris' evidence more generally. Dr Harris is an intelligent and careful person, and his evidence showed that he was well able to engage with distinctions of this kind. It is inherently unlikely that he misunderstood, in any material respect, the advice or suggestion that he was purporting to convey. Nor do I accept that his language can be dismissed as a mangled account of an entirely different and unobjectionable point. His explanation in cross-examination was, in my judgment, strained and over-refined. It involved seeking to avoid the ordinary meaning of words which he had chosen in a contemporary email sent for the purpose of persuading Sir Simon Hughes to permit or cooperate with publication. I am satisfied that Dr Harris understood the limitation significance of what he was proposing.

1547. I am less clear about the identity of the person at Atkins Thomson who was the source of the advice or suggestion as Dr Harris understood it. Mark Thomson denied any involvement. He was not copied into the 11 July 2019 email and said that he first saw it during disclosure in 2025. He categorically denied ever discussing, advising or stating to anyone that limitation should be camouflaged. In cross-examination, he said that he knew nothing about the email, had not discussed any such scheme or arrangement with Dr Harris or Mr Johnson, and did not think that anyone at Atkins Thomson had suggested it. He accepted that what was attributed to Atkins Thomson was improper,

but said that it was completely untrue that he or the firm had anything to do with it. After speaking to Mr Heath, he said that Mr Heath had not given advice about deterring a limitation argument, and that Dr Harris appeared to have misinterpreted an informal conversation.

1548. In his statement, Mr Heath said that he was not party to the 11 July 2019 email, had not seen it before it became an issue in these proceedings, and was not then developing any "*Mail hacking claims*" or otherwise involved in the matters referred to in that email. He denied giving the advice alleged. He said that any limitation camouflage scheme of the type alleged would be "*thoroughly improper*" and contrary to his professional duties, and that he would not have given such advice. He also said that, if the email was based on something he had said, it appeared to have been a "*mangling*" of a passing conversation with Dr Harris about a Byline article and the need for individuals mentioned in such articles to obtain legal advice, because Associated was likely to take a limitation point and because any claimant would have to explain when they acquired knowledge of the essential facts of the claim.

1549. In cross-examination, Mr Heath maintained that position. When the relevant sentence in the email of 11 July 2019 was put to him, he did not accept that it made sense as advice, observing that he was "*not really sure what's being said here*" and that it was "*not something*" he had said. He accepted, however, that he "*strongly suspected*" he was the Atkins Thomson lawyer referred to in the email. He said that, as far as he recalled, the conversation with Dr Harris had taken place in 2018, not on or shortly before 11 July 2019, and concerned a series of Byline articles rather than the proposed article about Sir Simon Hughes specifically. His account was that he had explained s.32 and actual knowledge: if Byline published an article and drew it to the attention of the person concerned, or if Byline provided or showed documents to that person while preparing the article, that would give the person actual knowledge; accordingly, it was important that such people should obtain legal advice because "*the clock would be ticking*" for limitation purposes.

1550. That evidence sits uneasily with Dr Harris' account in two respects. First, Dr Harris' evidence was that the relevant conversation with Mr Heath took place on 11 July 2019, before he sent the email to Sir Simon Hughes. He identified Mr Heath as the person at Atkins Thomson with whom he had spoken, and said that Mr Heath had explained the "*virtue*" of publication as defining the point at which actual knowledge was obtained. Mr Heath did not accept that. His evidence was that, so far as he could recall, the conversation was earlier, in 2018, and concerned a series of Byline articles generally, rather than the proposed article about Sir Simon Hughes specifically.

1551. Secondly, Dr Harris relied, in his oral evidence, on a note which he said he had made of a later conversation with Mr Heath, in October 2025, after the limitation camouflage allegation had been raised. Dr Harris said that this later conversation assisted him because Mr Heath had recalled an earlier discussion about the advantage of publication in defining the point at which actual knowledge was obtained. But the note, as put to Mr Heath, appeared to go further. It referred to "*SH*", to Dr Harris being worried about how to get him "*on board*", to "*[Mark Thomson] not keen*", and to "*Byline legalling*". Those references suggested that the conversation being recalled by Dr Harris was connected specifically with Sir Simon Hughes and the proposed Byline article about his *Mail* claim. Mr Heath did not accept that. He did not recognise the note, did not accept that he understood parts of it, did not recall any discussion about Mr Thomson being

"*not keen*", and denied that his earlier conversation with Dr Harris concerned the proposed Byline article about Sir Simon Hughes.

1552. I cannot safely find that Mr Heath gave advice in the form recorded in Dr Harris' email of 11 July 2019, or that he was party to any scheme to create an artificial limitation date. I accept Mr Heath's evidence that he did not advise that Byline articles should be used to create a false or artificial limitation watershed. I also accept that he did not put his advice in the terms used by Dr Harris in the email. But Mr Heath's evidence does not explain away the email. On his own evidence, he had discussed with Dr Harris how actual knowledge under s.32 might arise if Byline published an article and drew it to the attention of the person concerned, or if documents were shown to that person in the course of preparing an article. He also accepted, correctly, that using publication of an article to fix the date of actual knowledge would be misleading if the claimant already had knowledge of a worthwhile claim at an earlier date.

1553. The most likely explanation is that Dr Harris took, or understood himself to have taken, from a conversation with Mr Heath the point that publication in Byline could assist in identifying, or presenting, a date of actual knowledge, and then expressed that point in the improper terms used in his email to Sir Simon Hughes. I do not find, on the balance of probabilities, that Mr Heath gave the advice as recorded in that email, or that he was party to any limitation camouflage scheme. But I do find that the email reliably records Dr Harris' own understanding that the Byline publication was being proposed as a way of assisting the presentation of limitation by providing a public basis for the claims and seeking to blunt, if not deter, a limitation argument.

1554. I am also satisfied that the course identified in the email was subsequently followed in substance. Mr Johnson sent draft Byline articles to Sir Simon Hughes on 11 July 2019. Sir Simon Hughes had advance sight of draft articles and some involvement in timing, including the subsequent significant delay in publication. When his Reply was served, paragraph 22 relied on the July 2020 Byline publication as the point at which he was first made aware of potential UIG by Associated. That is the sense in which I find that the course recorded in Dr Harris' email was adopted and implemented. I do not need to find, and do not find, that every person alleged by Associated to have participated in the pleaded scheme did so.

1555. The surrounding emails are material. They show that publication was not simply a matter of independent journalism proceeding in isolation. There was communication with Sir Simon Hughes about timing and content. The publication of the articles was, at least in part, being considered through the lens of whether and how claims might be brought. This is consistent with my broader conclusion that the attempted distinction between journalism and litigation is not supported by the contemporaneous documents.

1556. I turn to the pleaded Frost Law Limitation Camouflage Scheme. Associated's case is that a scheme was agreed between Mr Johnson and Mr Thomson, and that the existence of the scheme is to be inferred from the emails identified in Annex A to the Rejoinder. The principal documents are communications between Mr Johnson and Mr Thomson in October and December 2018.

1557. On 9 October 2018, Mr Thomson emailed Mr Johnson asking: "*Please can you send me an email about bylines proposed story and I will ask Sadie for a response*". Mr Johnson replied: "*Sure, I will put together a proper email this morning and send it*

to you". Later that morning, Mr Johnson sent a more formal email to Mr Thomson. It began: "*Dear Mark, It's Graham Johnson here, the Head of Investigations at Byline. I am writing to you, to ask for a comment from Ms Sadie Frost, whom I believe, is a client of yours*". The email then set out, in draft article form, allegations that Ms Frost Law and Jade Schmidt had been hacked, that information had been passed to Mr Miskiw and then to Mr Anderson at the *Mail on Sunday*, and that the draft article was to include comment from Ms Frost Law. Mr Johnson also said that he had prepared a victim memorandum "*outlining the evidence, in more detail*".

1558. On 18 October 2018, Mr Johnson emailed Mr Thomson again asking whether Ms Frost Law would give Byline a quote about being hacked by the *Mail on Sunday* and saying: "*We can 'hand over our dossier evidence' to you wish (sic)*". On 19 October 2018, Mr Thomson replied that he was taking instructions, and asked whether the *Mail* had published any of the material and, if so, whether Mr Johnson could send him a copy of the article or articles. Mr Johnson replied that the *Mail on Sunday* had not published a story, but that the *Mail on Sunday* "*used the hacked transcripts as an INTELLIGENCE-gathering operation to monitor Sadie and her nanny, and to spy on rival paper NoTW*".

1559. On 29 December 2018, Mr Johnson emailed Mr Thomson again asking for a comment and asking: "*Do you think Sadie Frost will initiate a claim against the MoS?*" He said that the story was embargoed until the following day and that it was "*the fourth story in our MoS hacking series*" but "*the first story to offer good evidence that an MoS executive knew about hacked voicemails, as a result of voicemail transcripts being emailed to him*". Mr Thomson replied: "*I am away on holiday at the moment*". Mr Johnson forwarded that response to Dr Harris, Mr Heath and Dan Waddell.

1560. Associated submits that these emails are not merely routine journalist/solicitor correspondence. It points to the initial request for a "*proper email*", the formal tone of Mr Johnson's 9 October email, the fact that the email was written as though Mr Thomson was not already aware of the story, and the absence of any reference to the April 2016 meeting or to the earlier communications concerning possible *Mail on Sunday* hacking of Ms Frost Law. Associated submits that the emails are consistent with the creation of a documentary trail which could later support reliance on the Byline article as the point at which Ms Frost Law first acquired relevant knowledge.

1561. The Claimants submit that this is tendentious. Their case is that Mr Thomson did no more than ask a journalist to put a request for comment in writing so that it could, if appropriate, be passed to his client. They submit that Mr Johnson's offer to provide "*dossier evidence*", and Mr Thomson's response asking whether any article had been published by the *Mail*, are inconsistent with any attempt to conceal earlier knowledge. They say the December 2018 exchange is equally mundane: Mr Johnson wanted to know whether Ms Frost Law might bring a claim because that would be a good line for the story, and Mr Thomson replied that he was away on holiday.

1562. Ms Frost Law denies any knowledge of, or involvement in, any such scheme. In her sixth witness statement, she said that the first time she heard what Byline intended to publish was on 31 December 2018, when Dr Harris contacted her. She said that she was not contacted by anyone about what Byline intended to publish before then, including Mr Thomson after, as she was informed by her solicitors, he had been contacted in October 2018. She also repeated that she was not aware of the Miskiw/Anderson emails until the Byline article was published. She confirmed that statement in evidence.

1563. In my judgment, the Frost Law allegation is materially weaker than the Hughes allegation. There is no equivalent in Ms Frost Law's case of Dr Harris' email of 11 July 2019, which expressly referred to deterring a limitation argument and to Byline stories being used as the basis for claims being raised. The October and December 2018 emails relied upon by Associated are capable of giving rise to suspicion, particularly because of their formality, the use of the phrase "*proper email*", and the absence of any reference to the April 2016 meeting. They also show plainly that Byline publication and the possibility of a claim by Ms Frost Law were being discussed together. But they do not, in my judgment, prove the pleaded Frost Law Limitation Camouflage Scheme.

1564. In particular, I do not find that Ms Frost Law herself was party to any such scheme. She was not copied into the October or December 2018 emails. The first direct communication identified with her about the proposed publication was Dr Harris' contact on 31 December 2018. I accept her evidence that she had no knowledge of, or involvement in, any scheme to camouflage limitation. Nor do I find that the documents establish that Mr Thomson agreed with Mr Johnson to conceal the true limitation position from the Court. The documents may support Associated's broader case that the January 2019 Byline article cannot safely be treated as the first point at which the relevant material was available, but they do not justify a finding of the specific pleaded scheme in Ms Frost Law's case.

1565. Drawing these threads together, I find that the Hughes allegation is made good in a limited but material respect. Dr Harris' email of 11 July 2019 reliably records his appreciation of a limitation difficulty and his proposal that Byline publication should be used to provide a public basis for the claims and to blunt, if not deter, a limitation argument.

1566. For completeness, I make clear the findings I do, and do not, make about the individuals said to have been involved. In Sir Simon Hughes' case, I am satisfied that Dr Harris appreciated the potential limitation issue and proposed Byline publication as a means of presenting a later public point of knowledge. In that respect, his proposal was not merely clumsy or misguided. It was an improper attempt to blunt a limitation argument by obscuring the earlier availability of the facts relevant to the Miskiw/Anderson Emails. That is the significance of Dr Harris' statement that Byline stories could be "*referred [to] as the basis for claims being raised*", and of his explanation that this would help "*deter the Mail from arguing 'limitation'*".

1567. I am satisfied that, in this limited but important respect, Dr Harris' proposal was dishonest. It involved proposing that publication in Byline should be used to present a later public point of knowledge as the operative basis for the claim, when the relevant facts had already been available, or were at least capable of being obtained, earlier. At root, that proposal involved a deception. The finding concerns the proposal recorded in his email of 11 July 2019.

1568. The course proposed by Dr Harris was later implemented, in substance, when Sir Simon Hughes relied, in his Reply, on the July 2020 Byline publication as the point at which he first knew that he had a claim. To that extent, the Hughes Limitation Camouflage Scheme is proved. I do not, however, find that Sir Simon Hughes shared Dr Harris' appreciation of the limitation purpose, or that he acted dishonestly. Nor do I find that Mr Thomson or Mr Heath participated in that strategy, or that either gave advice in the terms recorded in Dr Harris' email. Nor do I find that Mr Johnson knew that the

publication of the Byline articles was being used for limitation purposes, although his role in preparing and publishing the articles was instrumental to the course being followed.

1569. I therefore accept Associated's submission that the 2019 material in Sir Simon Hughes' case supports, rather than undermines, its limitation case. The fact that Byline publication was being discussed by Dr Harris as a way of deterring a limitation argument tends to confirm that he understood that limitation might be a real issue because there had been earlier knowledge, or at least earlier availability of the relevant facts. The fact that the discussion took place in July 2019 – a point at which, had a claim been issued then, there would have been no issue with limitation – does not alter the position. The obvious concern was that, if claims were not issued promptly, a later claim might face an argument that the relevant facts had been known, or reasonably discoverable, earlier. As it turned out, they were not issued until 6 October 2022.

1570. The limitation camouflage allegations therefore never provided a free-standing answer to the claims, and in light of my findings on actual and constructive knowledge their practical significance is limited. I have found, independently of the camouflage allegations, that both Sir Simon Hughes and Ms Frost Law had, or could with reasonable diligence have obtained, facts sufficient to recognise a worthwhile claim based on the Miskiw/Anderson Emails before 6 October 2016. The relevance of the camouflage allegations is evidential. In Sir Simon Hughes' case, the 2019 email chain and the later reliance on the Byline publication provide support for Associated's case that the later pleaded watershed date was artificial. In Ms Frost Law's case, the October and December 2018 documents provide some support for Associated's broader contention that the Byline publication was not the first point at which the relevant facts were available, but they do not prove the pleaded Frost Law Limitation Camouflage Scheme.

(j) Conclusion on the Miskiw/Anderson limitation issue

1571. Drawing these matters together, I find that, if contrary to my conclusion on liability Mr Anderson knew that the information in the Miskiw/Anderson Emails was the product of voicemail interception or other UIG, then both Sir Simon Hughes and Ms Frost Law discovered, before 6 October 2016, facts sufficient to recognise a worthwhile claim. In each case, the claim would have been more than speculation. The necessary facts were known, or at least available on reasonable enquiry, through the persons then assisting with the investigation and development of possible claims against Associated.

1572. It follows that, on the alternative assumption I have made for the purposes of this section, s.32 would not postpone the running of time beyond April 2016. The claims based on the Miskiw/Anderson Emails would therefore have been statute-barred when these proceedings were issued on 6 October 2022.

1573. That conclusion is independent of my primary conclusion on liability. My primary conclusion remains that the Claimants have failed to prove that Mr Anderson knew, in April 2006, that the information provided by Mr Miskiw was the product of voicemail interception or other UIG. But if I were wrong about that, Associated's limitation defence would provide a further and separate answer to the claims brought by Sir Simon Hughes and Ms Frost Law based on the Miskiw/Anderson Emails.

(4) The "*Leveson Lies*"

(a) The issue to be resolved

1574. The Claimants advanced, as part of their answer to Associated's limitation defence, an allegation which has been described in the pleadings and submissions as the "*Leveson Lies*". In substance, the allegation was that three senior Associated witnesses gave evidence to the Leveson Inquiry which they knew to be untrue, and that this formed part of Associated's deliberate concealment of relevant facts. The allegation was originally pleaded in the Replies. The pleaded allegation was directed to evidence given to the Leveson Inquiry by Paul Dacre, Elizabeth Hartley and Peter Wright.

1575. I deal with the allegation because it is an extremely serious one. To allege that a witness knowingly gave false evidence to a public inquiry is not a matter of rhetoric. It requires clear identification of the statement said to have been false, the respects in which it is alleged to have been false, the evidence said to establish falsity, and the basis on which the Court is invited to find that the witness knew, when giving the evidence, that it was false. That is particularly so where the allegation is relied upon not merely as an attack on credit, but as an ingredient in an allegation of deliberate concealment for limitation purposes.

1576. In the event, the issue has only limited practical significance. My findings on liability mean that the limitation defence does not arise in relation to the claims, which I have not upheld. As a fallback, I have considered limitation in relation to the claims of Sir Simon Hughes and Ms Sadie Frost concerning the Miskiw/Anderson Emails. For the reasons I have given in that section of the judgment, I would have held that Associated's limitation defence succeeded in relation to those claims because, by April 2016 at the latest, each had at least constructive knowledge of the facts sufficient to bring a claim. The alleged "*Leveson Lies*" do not alter that conclusion.

1577. There are three reasons for that. First, Ms Frost does not say that she was influenced, in any material way, by the evidence given by Associated's witnesses to the Leveson Inquiry. Second, it is not suggested that the allegedly false Leveson evidence concealed any fact without which a cause of action in relation to the Miskiw/Anderson Emails would have been incomplete. For s.32(1)(b), the relevant concealment must be concealment of a fact relevant to the claimant's particular right of action; it is not enough to identify a general denial of wrongdoing, or evidence which, even if inaccurate, did not conceal from the claimant a fact needed to plead or investigate the claim. Third, by April 2016, whatever the position before then, the Claimants had sufficient knowledge to investigate and bring a claim concerning the Miskiw/Anderson Emails. The alleged Leveson evidence therefore cannot postpone time beyond the point at which the necessary knowledge was, or ought reasonably to have been, acquired.

1578. I therefore address the "*Leveson Lies*" issue only to the extent necessary. It is not necessary, and would not be appropriate, to conduct in these proceedings a general inquiry into the adequacy of Associated's response to the Leveson Inquiry. But the seriousness of the pleaded allegation, the time spent on it at trial, the prominence it assumed in parts of the Claimants' case, and the fact that the allegations have been publicly aired, mean that I should explain why I do not accept that the pleaded allegations have been proved. I have also taken into account that Associated urged me to resolve the issue. My fuller summaries and assessments of the evidence of Mr Dacre,

Ms Hartley and Mr Wright are set out in Appendix 2. In this section, I address only the pleaded "*Leveson Lies*" allegation and its relevance to limitation.

(b) The pleaded case and the way it was pursued

1579. The starting point is the pleaded case. The Replies alleged that deliberate falsehoods were stated by Mr Dacre, Ms Hartley and Mr Wright in evidence to the Leveson Inquiry. The pleaded case was clear in its form: it alleged lies. It was not pleaded simply as a case that Associated's investigations were inadequate, that its disclosure to the Inquiry was incomplete, or that its witnesses gave evidence which, with hindsight and in light of later-disclosed documents, may be criticised as too broadly expressed.

1580. The way in which the allegation was pursued at trial was materially narrower and less clearly focused than the pleaded case. By closing, the allegation was pursued only by Prince Harry, Mr David Furnish, Sir Elton John and Sir Simon Hughes. More importantly, the cross-examination did not proceed, in any sustained or systematic way, by putting to each of the three Leveson witnesses the specific passages of their evidence which were said to be lies and then identifying why the witness must have known those passages to be false when the evidence was given.

1581. Instead, much of the questioning ranged over a broader field: the scale and nature of Associated's use of inquiry agents and private investigators; the implications of Operation Motorman; whether Associated had made adequate inquiries before and during the Leveson Inquiry; whether relevant documents, including ledgers or underlying materials, had been provided to the Inquiry; and whether senior executives had been willing to explain how particular internal documents came to be generated. Those matters may have been deployed as forensic criticism of Associated's systems or as submissions about the adequacy of its response to the Inquiry. But they were not the pleaded "*Leveson Lies*". Nor were they, in that broader form, issues which the Court had to determine in these proceedings.

1582. I accept Associated's central complaint that, as the trial progressed, the issue became less clearly anchored to the pleaded allegations. Those allegations were serious and specific in character. The trial presentation became more diffuse. Several times, the cross-examination was insufficiently clear as to whether the witness was being accused of lying, of having failed to make adequate inquiries, of giving an answer that was overly broad, or of being unable to explain what others within Associated had done. There is an important distinction between those allegations. A witness may give evidence which is incomplete, imprecise, or later shown to have been too confidently expressed without being dishonest. Equally, a corporate response to a public inquiry may be open to criticism without it following that the witness who gave evidence to the inquiry knowingly lied.

1583. I accept Associated's submission that fairness required the relevant allegation to be put squarely to the witness. That was particularly important where the allegation was one of knowing falsehood. On more than one occasion, I had to press for clarity as to the case being put. That is not a technical objection. It goes to basic fairness. A witness accused of lying should be told, with sufficient precision, what statement is alleged to be false, why it is said to be false, and why it is alleged that the witness knew it to be false.

(c) Mr Dacre

1584. Mr Dacre gave evidence to the Leveson Inquiry in his capacity as a very senior editor and executive within Associated. The pleaded allegation against him was advanced as part of the general case that Associated's senior witnesses falsely denied wrongdoing, including phone hacking and unlawful information gathering, and falsely maintained that Associated's journalists had not engaged in such conduct.

1585. That allegation was not put to Mr Dacre at trial in the manner pleaded. In particular, the central allegation that he lied to the Leveson Inquiry about phone hacking was not squarely put to him as a pleaded lie. The cross-examination instead concentrated on a broader range of matters: what he knew or understood about Operation Motorman; the use of inquiry agents or private investigators; the basis for Associated's statements at Leveson; whether the material then available supported the high-level assurances he gave about Associated's standards; and whether the "*phone numbers and addresses*" description of inquiry agent work was consistent with surviving documents.

1586. Mr Dacre accepted, as he had at Leveson, that there was at least a prima facie case in relation to unlawful activity by inquiry agents. But he maintained the distinction which he had drawn at the time between that position and any knowledge that Associated journalists themselves were acting unlawfully, or that Associated was engaged in the more serious criminality alleged. His evidence at trial was that his focus at Leveson had been principally on phone hacking, which he regarded as the central issue. He rejected the suggestion that he had knowingly misled the Inquiry.

1587. The Claimants' closing submissions did not identify, with the necessary precision, a discrete passage of Mr Dacre's Leveson evidence which the Court was asked to find was a lie, still less did they set out a clear chain of reasoning by which I could be satisfied that Mr Dacre knew the identified passage was false when he gave it. The Claimants' submissions instead relied on broader themes: that Associated's witnesses had "*closed ranks*"; that repeated formulations, including references to inquiry agents being used for "*phone numbers and addresses*", were contradicted by documents; and that late-disclosed material, including ledgers said to have been generated in June 2011, raised questions about what internal investigation had been undertaken.

1588. I do not accept that those matters establish that Mr Dacre lied to the Leveson Inquiry. They can support criticism of the breadth of some of the assurances given, or of the adequacy of the corporate exercise undertaken at speed in response to the Inquiry. My assessment of Mr Dacre as a witness was that he was straightforward and generally careful. He had no direct evidence to give about the specific allegations in these claims. His answers were consistently framed by the limits of his knowledge and recollection, and by his reliance at the time on managing editors, senior executives and lawyers. Even if some of the assurances given on Associated's behalf at Leveson may now be criticised as too broad – as to which I make no findings – the evidence does not establish the necessary elements of the pleaded allegation against Mr Dacre: a specific false statement, its falsity, and his knowledge of that falsity when he gave evidence. I accept his evidence that he did not knowingly give false evidence to the Leveson Inquiry.

(d) Ms Hartley

1589. The allegation against Ms Hartley was more focused. The pleaded and trial focus was the passage in her Leveson witness statement, dated 25 October 2011, in which she said, in relation to Associated's dealings with Mr Whittamore:

> "On the basis of our current state of knowledge, I can summarise the position regarding [Associated's] dealings with Mr Whittamore as follows… We have seen no evidence to suggest that any of the information Mr Whittamore may have obtained for our journalists was illegally obtained or that any of our journalists ever asked Mr Whittamore to do anything illegal or were aware that he might be obtaining information for them in an illegal manner."

1590. That passage was put to Ms Hartley in cross-examination. The Claimants contended that it was not merely too bold, but false or at least deliberately misleading in light of material said to have been available to her during the Internal Review and Leveson process. Particular reliance was placed on the Field aide-memoire (see [A2.157]) and on material said to show that categories of search, including vehicle checks, criminal record checks, friends and family information, mobile conversions and ex-directory numbers, would have been understood as unlawful or at least highly suspect.

1591. Ms Hartley accepted that, viewed now and in isolation, the paragraph was too strongly expressed. She said that she was "*not happy with that paragraph*" and wished it had not been included. She accepted that, strictly, it would have been more accurate to say that she was not satisfied on the evidence she had seen at the time that Associated journalists had commissioned unlawful searches for information. She also accepted that if she had been able to analyse the material then as fully as it has been analysed during this litigation, the paragraph would not have been expressed in that way.

1592. Those concessions were proper and important. But they do not amount to an admission of lying, and I do not find that Ms Hartley lied. She rejected the suggestion that the paragraph was deliberately framed to conceal what was known, saying "*absolutely not*". She explained the circumstances in which the Leveson materials were prepared, including the time pressure, the compressed timetable, the evolving nature of the information being gathered, and the assistance she received from external solicitors and others. She also rejected the suggestion that she would have suppressed material because it was "*unhelpful*" to Associated, saying that she could not conceive of any reason why she would withhold something from the board and that there was no question of anyone, "*from Paul Dacre down*", expecting her to mislead the board.

1593. The Claimants' closing submissions maintained that the paragraph should be found to have been materially misleading and knowingly false, relying on the Field material, the Internal Review process and what was or was not disclosed to the Leveson Inquiry. Associated accepted that this pleaded paragraph raised an issue requiring determination, but submitted that the cross-examination and submissions impermissibly expanded the issue into a broader criticism of the adequacy of Associated's investigation and disclosure to Leveson.

1594. In my judgment, with the benefit of hindsight, the paragraph should not have been expressed in the way it was. It was too broad and, read literally, apt to give an impression of greater confidence than the underlying material justified. It did not

adequately reflect the uncertainty and difficulty of the position, and it did not draw the more careful distinction that Ms Hartley now accepts should have been drawn between absence of satisfaction on the material reviewed and absence of "*evidence*" in any wider sense. But I am not satisfied that Ms Hartley knew the paragraph to be false when she signed her statement or gave evidence to the Inquiry. Nor am I satisfied that she deliberately framed the paragraph so as to mislead the Inquiry. I accept her evidence that the paragraph reflected her honest understanding at the time, albeit that, with hindsight, it was inadequately and too boldly expressed.

(e) Mr Wright

1595. The pleaded allegation against Mr Wright was narrower still. The relevant pleaded passage was his Leveson evidence (see [A2.232]) that Mr Dacre had banned all use of external search agencies in April 2007 with immediate effect, subject to identified exceptions, and that:

> "As far as I am aware the rules we imposed have always been observed on *The Mail on Sunday*".

1596. Associated submits that, following rulings and exchanges during the trial, that was the only relevant pleaded "*Leveson lie*" against Mr Wright. The point is important because a considerable amount of the cross-examination of Mr Wright addressed broader matters: what he knew about inquiry agents and private investigators; when he became aware of payments to them; what he understood of the Whittamore material; whether invoices and work lists were sufficiently informative; whether ledgers or other documents ought to have been disclosed to the Leveson Inquiry; and the use of US-based investigators. Those topics were explored at some length. But they were not the pleaded "*Leveson lie*".

1597. The pleaded passage was not squarely put to Mr Wright as a lie in the way that fairness required. He was not taken, with sufficient precision, to that passage and asked to accept, or to answer, the proposition that when he said "*as far as I am aware*" the rules had always been observed on the *Mail on Sunday*, he knew that statement to be false. Instead, the cross-examination sought to build a broader case that, given his hands-on role, his interest in budgets, his knowledge of Associated's systems, and the documentary material relating to third party expenditure, it was implausible that he did not know more than he accepted.

1598. Mr Wright resisted that case. He explained that the financial information he reviewed was not a complete record of all relevant expenditure, but a bespoke list of direct editorial expenditure. He said that many inquiry agent payments were monitored operationally by the managing editor and did not appear in the form of financial information he reviewed. He maintained that he had not seen the detailed "*second sheet*" material in 2004, that he relied on others in relation to investigation and disclosure for the Leveson Inquiry, and that he answered the questions he was asked to the best of his knowledge at the time.

1599. The Claimants' closing submissions relied on the broader proposition that the Court should be slow to accept managerial assurances about compliance where the surviving material showed substantial TPI activity. But that is not the same as proving that Mr Wright knowingly gave false evidence to Leveson. It may support a submission that

his evidence was incomplete, or that Associated's internal processes did not present him with the information which, with hindsight, should have been available. It does not establish that the pleaded words were a lie.

1600. My assessment of Mr Wright was that he was a careful and measured witness. He distinguished what he knew from what he did not know, and what he recalled from what he could not recall. He made appropriate concessions, but did not speculate. I accept his evidence that he did not knowingly mislead the Leveson Inquiry. In relation to the pleaded passage, I am not satisfied that the Claimants have proved falsity, still less knowledge of falsity.

(f) Conclusion on the "*Leveson Lies*"

1601. Standing back, the allegation of "*Leveson Lies*" has not been proved. The case as pleaded was that three witnesses knowingly gave false evidence to the Leveson Inquiry. By trial, that case had narrowed and, in some respects, shifted. In relation to Mr Dacre, the central pleaded allegation, including the allegation that he lied about phone hacking, was not squarely put. In relation to Ms Hartley, the relevant paragraph was squarely challenged. I accept that it was too broadly expressed and, with hindsight, should not have been included in that form; but I do not find that she knew it was false or intended to mislead the Inquiry. In relation to Mr Wright, the pleaded passage was not properly put as a lie, and the broader cross-examination did not prove that his Leveson evidence was knowingly false.

1602. This conclusion does not require me to find that Associated's response to the Leveson Inquiry was beyond criticism. It may be said, with some force, that the exercise was undertaken under pressure and that some of the evidence given to the Inquiry was, with hindsight, expressed in terms that were too confident or insufficiently qualified. There were also criticisms advanced about the adequacy of the inquiries made, the way in which material was analysed, and the scope of documents provided to the Inquiry. I do not need to decide whether, or to what extent, those criticisms are well-founded. They are distinct from the pleaded allegation that individual witnesses knowingly gave false evidence. The Court is not conducting a public inquiry into the adequacy of Associated's response to, or engagement with, the Leveson Inquiry.

1603. The Claimants have therefore failed to establish that Mr Dacre, Ms Hartley or Mr Wright gave evidence to the Leveson Inquiry which they knew to be untrue. Nor have they established that the Leveson evidence amounted to deliberate concealment of any fact relevant to the claims concerning the Miskiw/Anderson Emails. In any event, for the reasons already given, by April 2016 Sir Simon Hughes and Ms Frost had, or could with reasonable diligence have obtained, sufficient knowledge to bring claims in relation to those emails. The alleged "*Leveson Lies*", even if established, would not have postponed time beyond that point.

1604. In my judgment, the Claimants are open to criticism for the way in which the "*Leveson Lies*" allegations were pursued. The allegations were extremely serious. Yet, save in relation to the particular paragraph in Ms Hartley's witness statement, they were not consistently anchored to identified statements which were put to the relevant witness as deliberate falsehoods. In significant respects the case shifted from the pleaded allegation of lies to broader criticisms of Associated's inquiries, disclosure and

corporate response to the Leveson Inquiry. This is not how allegations of this seriousness should be advanced.

H: Conclusion and next steps

1605. For the reasons given in this judgment, each of the Claimants' claims is dismissed.

1606. This judgment will be handed down remotely (i.e. without a hearing in Court), by circulation to the parties, publication on the Judiciary website and being sent to the National Archives for publication (in the usual way). A hearing has been fixed for 29-30 July 2026 to give the parties time to consider the judgment and to seek to agree the orders consequent upon the judgment. The Court will resolve any matters of dispute at this further hearing. I have set a timetable for the parties to identify issues in dispute and to submit submissions in advance of the hearing.

Appendix 1: Litigation History

(1) Summary judgment and use of Leveson documents

A1.1. At an early stage in the proceedings, Associated applied for summary judgment and/or strike out on the basis that the claims were time-barred ("the Limitation Application"). The Claimants relied on s.32 Limitation Act 1980, contending that the alleged unlawful information-gathering activities had been deliberately concealed and that they did not know, and could not with reasonable diligence have discovered, the relevant facts earlier. Associated also applied to prevent reliance by the Claimants on certain material derived from documents provided to the Leveson Inquiry, on the basis that those documents were subject to continuing restriction orders under the Inquiries Act 2005 ("the Restriction Application").

A1.2. In a judgment handed down on 10 November 2023 ([2024] 1 WLR 3669) ("the Limitation Judgment"), the Court dismissed the Limitation Application, holding that each Claimant had a real prospect of establishing, at trial, that the claims were not statute-barred and that issues of concealment, knowledge and reasonable diligence were fact-sensitive matters unsuitable for summary disposal. The Court upheld the Restriction Application, holding that such material could not be relied upon unless and until the relevant Leveson restriction orders were lawfully varied or revoked.

A1.3. During 2024, there was a short hiatus, whilst the Claimants sought and obtained permission from the relevant Ministers to use in the litigation certain documents from the Leveson Inquiry, before the parties completed the exchange of statements of case.

(2) First CMC and Costs Budgeting ([2025] EWHC 106 (KB))

A1.4. The first case management hearing took place on 26-27 November 2024 at which I sat with Senior Master Cook ("First CMC"). The Court considered the parties' proposed costs budgets for the proceedings through to trial. The combined budgets initially advanced by the parties would have resulted in total estimated costs of just over £38.8 million, which the Court concluded were manifestly excessive and disproportionate.

A1.5. Following revised budgets and detailed consideration of proportionality under CPR 3.15 and CPR 44.3, the Court approved a single consolidated budget for the Claimants and a single consolidated budget for Associated, reflecting the substantial overlap between the claims and allowing for costs sharing between the Claimants. Ultimately, the Court approved total budgeted costs of £4.084 million for the Claimants and £4.445 million for Associated, covering the remaining phases of the litigation through to trial listed to commence in January 2026 and estimated at that stage to take 9 weeks.

A1.6. Between the First and Second CMCs, by 21 March 2025, the parties were ordered to provide disclosure. Directions were given for disclosure and evidence and a specific timetable for any amendments to the Claimants' claims following disclosure.

(3) Second CMC ([2025] EWHC 1716 (KB))

A1.7. This judgment followed the second substantial Case Management Conference, on 6-7 May 2025 ("the July Judgment"). The Court determined a wide range of

contested disclosure and procedural applications. In doing so, the Court addressed and set the proper parameters of the proceedings, emphasising that they are civil litigation rather than a public inquiry, and that any reliance by the Claimants on "*generic*" or "*similar fact*" material required tight control ([36]-[41], [53]-[57]).

A1.8. The July Judgment was central to defining and confining the scope of the litigation in advance of trial. Having regard to the pleadings as they then stood, the nature of the allegations advanced, and the need for the proceedings to be conducted in a proportionate and manageable way, the Court determined that the trial should proceed on a clearly circumscribed factual and evidential basis.

A1.9. In particular, the Court required the focus of the trial to be upon the specific alleged unlawful acts and publications relied upon by each Claimant, and declined to permit the expansion of the case into broader or more diffuse allegations concerning Associated's historic practices ([42]-[47], [58]-[61]). Allegations made as part of the Claimants' 'generic case' were permitted only insofar as they disclosed a properly arguable basis for establishing propensity in relation to a relevant journalist. Even then, such material was admitted only subject to robust proportionality controls ([44]-[49], [58]-[61]). The Court made clear that the trial was not to become an inquiry into the general culture or practices of Associated – a point to which the Court returned in the October Judgment (see below) – but was to be directed to the pleaded claims of UIG and misuse of private information ([43], [53]-[55], [59]-[60]).

A1.10. Corresponding limits were imposed on disclosure and witness evidence. The Court directed that evidence be confined to matters directly relevant to the issues as so defined, refusing disclosure sought on a broad or unfocused "*train of inquiry*" basis ([99]-[102], [126]-[129], [161]-[164]).

A1.11. These rulings fixed the factual and evidential parameters within which the case would proceed to trial. They were intended to ensure that the litigation remained focused, fair and proportionate, and they informed subsequent case management decisions, including the approach to amendment of the pleadings and the structure of the trial itself ([61], [102], [104]-[106], [160], [274]).

A1.12. The Court also resolved numerous disclosure applications, granting limited and targeted relief but refusing broad or speculative applications framed to support the generic case. Importantly, based on an apparent acceptance by the Claimants that such documents fell within their control, the Court ordered a further search of documents held by the Claimants' Research Team ([209]-[232], especially [225], [228]-[232]).

(4) Third CMC ([2025] EWHC 2573 (KB))

A1.13. This judgment followed the third substantial Case Management Hearing on 1-2 October 2025 ("the October Judgment") and dealt primarily with the Claimants' late application to amend their Particulars of Claim and Associated's overlapping strike-out applications. The judgment reaffirmed, applied and enforced the parameters of the litigation previously set by the Court in the July Judgment, and did so in the context of imminent trial ([1]-[3]).

A1.14. At the outset, the Court emphasised that the October Judgment must be read together with the July Judgment, and that the principles articulated there –particularly

concerning relevance, propensity evidence and proportionality –were determinative of the pleading and strike-out issues that arose for determination ([3]-[8]). The Court rejected submissions that it should "*reconsider*" those parameters, holding that they represented a correct and binding articulation of the proper scope of the litigation ([7]-[8], [13]-[14]).

A1.15. Central to the October Judgment was a detailed restatement and application of the limits on the Claimants' "*generic case*". The Court reaffirmed that, as a matter of principle, proof that one journalist or agent had engaged in UIG could not be probative of whether another journalist had done so, absent highly unusual circumstances ([12]-[13]). Propensity evidence was admissible only where it was logically probative of the conduct of the particular pleaded journalist concerned with a specific pleaded article or incident, and even then remained subject to strict proportionality control ([13], [19], [21], [35]).

A1.16. The Court rejected repeated invitations to treat Associated's alleged "*scale of wrongdoing*" or "*habitual practices*" as relevant issues in themselves. Even if it were possible to establish that UIG had been widespread or habitual at Associated, that would not assist in proving whether UIG occurred in any individual claimant's case. Such an inquiry would amount to a public inquiry, not civil litigation, and would be neither necessary nor proportionate for the fair resolution of the claims ([4], [20], [22]).

A1.17. In addressing authorities relied upon by the Claimants, including ***O'Brien***, ***Gulati***, and subsequent Mirror and News Group litigation, the Court held that those cases did not support a broader generic or cross-journalist propensity case. The earlier cases had proceeded on materially different bases, often after admissions of liability, and did not establish any principle permitting misconduct by employee A to be used as evidence against employee B ([14]-[17]). The Court held that each piece of purported "*evidential jigsaw*" relied upon must itself be relevant and logically probative; material that failed that threshold could not be relied upon at all ([19]).

A1.18. Applying those principles to the Claimants' amendment application, the Court stressed that the application was materially late and largely unjustified by disclosure developments. Only a very small fraction of the proposed amendments arose from unredacted disclosure by Associated, and the proximity of trial weighed heavily against allowing expansive reformulation of the case ([24]-[25]). The delay materially weakened the Claimants' position and reinforced the need for strict control of scope ([24]-[25], [39]).

A1.19. In resolving the amendment and strike-out applications, the Court adopted a granular, paragraph-by-paragraph approach, guided by a single overriding principle: whether the pleaded material was capable of being probative of UIG by a particular pleaded journalist or agent in relation to a pleaded article or incident ([34]-[37]). Generalised allegations, rolled-up pleadings, or assertions of frequency or extent, without specific pleaded incidents, were repeatedly held to be insufficient ([35]-[41]).

A1.20. The Court accepted that, in principle, Claimants could rely on specific alleged instances of UIG involving a pleaded journalist at another newspaper to establish propensity, but only where those incidents were particularised, probative, and manageable. General allegations of misconduct, departmental culture, or historic

practices – whether of journalists, editors or desks – were rejected as incapable of supporting liability in individual claims ([35], [37], [41]).

A1.21. A similar approach was taken to pleaded material concerning TPIs. While it was legitimate to establish, if disputed, that a pleaded TPI offered services including UIG, the Court made clear that this line of inquiry had to be tightly controlled. The focus was required to remain on specific alleged incidents of UIG commissioned by Associated, not on TPIs' general activities or work for other publishers. Otherwise, the case risked devolving into an unmanageable inquiry of peripheral relevance ([36]-[37]).

A1.22. The Court rejected attempts to rely on cash payments, "*special*" descriptions, or alleged "*targeting*" as freestanding indicators of UIG. Such matters might raise suspicions, but without pleaded and provable acts they did not establish UIG and could not justify the expansion of the litigation beyond defined limits ([38]-[40]). The Court emphasised that it was UIG, not mere interest or expenditure, that had to be established to sustain a civil claim ([40]-[41]).

A1.23. The Court also refused permission to amend the pleadings to advance allegations of deliberate destruction of documents by Associated. Such allegations were held to be too speculative, insufficiently particularised, and incapable of supporting either factual inferences or a concealment case under s.32 Limitation Act 1980. In particular, the proposed pleading failed to identify relevant individuals or plead the required state of mind ([42]-[44]).

A1.24. Separately, the Court struck out the long-standing "*Ward Allegations*" (the so-called "*burglaries to order*"), holding that, even if proved, they were incapable of assisting the resolution of the Claimants' claims. The allegations had no nexus to any Claimant or pleaded journalist and were therefore irrelevant as a matter of principle ([46]). In any event, the Court held that they were now grossly disproportionate, complex and distracting, and would have been excluded on case-management grounds in any event ([47]-[49]).

A1.25. Finally, the Court ordered the consequential striking-out of passages in the Replies that could not stand once the corresponding pleading in the Particulars of Claim had been removed. The Court rejected objections based on technicalities, holding that resolving all pleading consequences was necessary to protect the trial timetable and ensure clarity of the issues to be tried ([50]-[54]).

A1.26. Overall, the October Judgment marked a decisive application of the July Judgment's principles, firmly confining the litigation to a defined, proportionate and trial-manageable core. It underscored that the proceedings are not a vehicle for investigating Associated's historic practices at large, but are directed to determining whether particular Claimants were subjected to UIG by particular individuals in relation to pleaded articles or incidents, supported only by evidence that is relevant, properly particularised, and proportionate ([21]-[22], [39]-[41], [46]).

A1.27. The Claimants' application for permission to appeal against the October Judgment was refused by Lewison LJ on 7 November 2025. The proposed appeal was directed to case-management decisions which fell squarely within the Court's discretionary powers under the CPR, giving effect to the overriding objective, including

proportionality and the efficient allocation of court resources. There was no basis for appellate intervention unless the decisions were plainly wrong, which they were not. The Court had correctly addressed the law on similar fact and propensity evidence in the July Judgment and applied the same approach consistently thereafter; any attempt to challenge that analysis amounted to an impermissible collateral attack on an unappealed decision. In any event, the Court was entitled to exclude the disputed material on case-management grounds to prevent the litigation from becoming a disproportionate and unmanageable inquiry.

(5) Pre-Trial Review and Costs Budgeting

A1.28. The Pre-Trial Review took place on 26-27 November 2025. The Court gave a series of rulings at the pre-trial review dealing with (i) an application for anonymity by one of the Claimants' proposed witnesses (referred to in the judgment on an anonymised basis as "Berlin", but identified at trial as Jerry Yanover); (ii) applications to make further late amendments to the Particulars of Claim; and (iii) a targeted application for further disclosure ([2025] EWHC 3237 (KB)).

A1.29. The Court refused the application for anonymity. Applying settled open-justice principles, the Court held that anonymity is a wholly exceptional derogation requiring clear and cogent evidence of necessity ([15]-[23]). The Claimants did not contend that Articles 2 or 3 were engaged, and the evidence relied upon demonstrated no "*real and immediate*" risk of serious harm ([27], [31]-[32]). The fears articulated by Berlin were general, speculative and not objectively substantiated, and were insufficient to outweigh the strong presumption in favour of open justice and the public interest in the identification of witnesses giving evidence in a case of this nature ([31]-[35]). The Court also held that anonymity would, in any event, be unlikely to mitigate the risks relied upon ([34]). Permission to appeal was refused, although a temporary stay of the reporting restriction was granted to preserve any renewed application to the Court of Appeal ([37]-[39]). In the event, no renewed application for permission to appeal was made to the Court of Appeal and so the temporary reporting restrictions preventing the identification of Mr Yanover were discharged.

A1.30. In the same ruling, the Court refused permission for two late amendments to the Particulars of Claim concerning alleged UIG involving Nicole Lampert and Jonathan Stafford and a person identified in the judgment as PPT. The Court accepted that both amendments were directed solely to propensity. It held that the proposed amendments were very late, depended on inference upon inference, raised no strong prima facie case of wrongdoing, and would require substantial investigation into new satellite issues only weeks before trial ([48]-[55]). Granting permission would be disproportionate and inconsistent with the parameters previously imposed on the scope of the generic and propensity cases.

A1.31. By contrast, the Court granted a limited application for further disclosure relating to payments made to Lee Harpin in connection with commissions by specified pleaded journalists ([56]-[71]). Although late, the application was allowed because Mr Harpin's apparent role had evolved, and the targeted disclosure sought was consistent with the disclosure principles previously applied to TPIs. The Court emphasised that any use of such material would be confined to propensity, and that any further amendment applications would be subject to the same strict scrutiny and proportionality constraints already articulated ([71]-[72]).

A1.32. Subsequently, in a judgment handed down on 9 December 2025, the Court (including Senior Master Cook) determined two costs-related issues arising from the PTR: (i) whether the Claimants should be jointly and severally liable for any adverse common costs incurred by Associated; and (ii) applications by both sides to vary their approved costs budgets ([2025] EWHC 3207 (KB)).

A1.33. On the first issue, the Court granted Associated's application for a prospective costs-liability order in respect of common costs. Although there was no Group Litigation Order, the Court held that it had jurisdiction under CPR 3.1 and 44.2 to make such an order as a matter of case management ([12]-[14], [24]). The Court accepted that the Claimants were pursuing individual claims but were doing so on the basis of a substantial shared core of generic and similar-fact allegations, which they advanced collectively and on which each Claimant relied as a central plank of their case ([10]-[11], [30]). In those circumstances, and applying established authority, the proper principle was that Claimants pursuing a common case should be jointly liable for the reasonable costs of that common claim, but severally liable for costs particular to their individual claims ([25]-[29]).

A1.34. The Court rejected the Claimants' submission that such an order should be deferred until the end of the litigation. It held that it was important, at this stage, that the Claimants clearly understood the potential costs consequences of the way the litigation was being pursued, particularly given the scale of costs already incurred and those still to be incurred ([30]-[32]). The order did not predetermine the ultimate incidence or assessment of costs, nor prevent the Court from adopting a different approach if circumstances later justified it ([32]).

A1.35. The Court also ruled on competing applications to vary the approved budgets in relation to pleadings, CMCs, disclosure and witness statements, applying CPR 3.15A. It identified and assessed whether there had been "*significant developments*" justifying revisions and allowed or disallowed variations phase-by-phase, approving only those additional costs which were reasonable and proportionate to the developments relied upon ([35]-[73]). The judgment further recorded deficiencies in the form of the existing costs management order and directed that it be amended to comply properly with CPR 3.15 ([74]-[77]).

(6) The Burrows Video-Link decision ([2026] EWHC 451 (KB))

A1.36. On 26 February 2026, the Court determined whether Mr Gavin Burrows – a central witness for the Claimants whose evidence underpinned significant parts of several pleaded claims – should be permitted to give oral evidence by video-link from an unidentified foreign jurisdiction. The issue arose because Mr Burrows had withdrawn cooperation, was not compellable to attend in England and Wales, and had expressed safety-related concerns about travel, but nevertheless indicated a willingness to give evidence remotely ([1]-[5], [12]-[18]).

A1.37. Applying CPR 32.3 and PD32 Annex 3, the Court held that the correct comparison was not between in-person evidence and video-link evidence, but between video-link evidence and no oral evidence at all. Given the importance of Mr Burrows' evidence to the fair resolution of serious allegations, depriving the parties of any opportunity to test that evidence would be a more substantial interference with the interests of justice than permitting cross-examination by video-link ([26]-[29], [42]).

A1.38. The Court rejected objections based on state sovereignty and comity, holding – by reference to ***Joyce -v- Sunland Waterfront (BVI) Ltd*** and ***Skywind Holdings Ltd -v- Wilson*** – that the voluntary giving of evidence by video-link from abroad does not constitute an impermissible exercise of judicial power on foreign territory, provided the foreign law does not prohibit such evidence ([30]-[39], [43]). Comity was relevant to discretion but did not impose a legal precondition of foreign state consent ([43]-[45]).

A1.39. The Court concluded that there was good reason to permit video-link testimony, subject to stringent safeguards and ongoing judicial control. Permitting such evidence best served the overriding objective by ensuring that material evidence could be tested adversarially while maintaining fairness and proportionality ([27]-[29], [45]-[47]).

(7) The Operation Fishpool Disclosure decision ([2026] EWHC 493 (KB))

A1.40. On 3 March 2026, the Court refused the Claimants' application, under CPR 31.17, for third-party disclosure against the Commissioner of Police of the Metropolis, seeking documents generated during Operation Fishpool which allegedly recorded what Stephen Wright had told the police in 2007 as to the source of information for Article (45) ([1]-[2], [6]-[7]).

A1.41. The Court emphasised that non-party disclosure under CPR 31.17 is exceptional and requires both likely relevance and necessity. It held that the documents sought did not go to the central pleaded issue – whether the information was obtained through corrupt payments to a police officer – but at most to the consistency or credibility of Mr Wright's accounts, which was insufficient to meet the "*likely to support*" threshold in CPR 31.17(3)(a) ([8]-[11]).

A1.42. Even if relevance were established, the Court held that disclosure was not necessary to dispose fairly of the claim. The alleged inconsistency had already been fully explored through cross-examination and existing evidence, and the absence of the requested material caused no forensic unfairness ([12]-[14]). The trial could be fairly determined without it.

A1.43. The Court also attached weight to the lateness of the application and the disproportionate disruption that disclosure would cause in a trial already significantly over-running, including the potential recall of witnesses. The application risked reviving lines of inquiry previously excluded as collateral and distracting, contrary to earlier case-management rulings ([15]-[17]). The application was therefore refused ([18]).

(8) The Burrows Evidence and Further Hearsay decision ([2026] EWHC 556 (KB))

A1.44. By a judgment dated 12 March 2026, the Court resolved two related applications, made during the trial, concerning Mr Burrows: (i) an application for permission to rely on additional hearsay evidence from Mr Burrows not previously included in the Claimants' Civil Evidence Act 1995 notices ("the Further Hearsay Application"); and (ii) an application by the Claimants to call Mr Burrows to give oral evidence instead of relying on his hearsay evidence ("the Burrows Evidence Application") ([1]-[8]).

A1.45. The Court refused the Further Hearsay Application. It held that the application was made at an extremely late stage – after the conclusion of the Claimants' evidence – and sought to reverse a deliberate tactical decision, taken in October 2025, as to the scope of the hearsay relied upon. No good reason was shown for the default, most of the material had long been available, and the late admission would cause real prejudice to Associated by undermining the disciplined operation of the statutory hearsay regime ([16]-[21]). The Claimants were required to live with the consequences of their tactical choice ([21]-[22]).

A1.46. Turning to the Burrows Evidence Application, the Court rejected the proposal that Mr Burrows should be treated as a witness of the Court, emphasising the fundamentally adversarial nature of civil proceedings and the absence of any general power for the Court to call witnesses in ordinary civil trials ([12], [23]-[25]).

A1.47. The Court accepted, exceptionally, that relief from sanction, under CPR 32.10, should be granted to permit the Claimants to call Mr Burrows as their own witness and conduct a limited examination-in-chief, despite their earlier decision to rely on hearsay. While the default was serious and there was no good reason for it, the decisive factor was the centrality of Mr Burrows' evidence to serious allegations which the Court could not fairly resolve without hearing from him directly ([33]-[40]).

A1.48. Relief from sanction was granted only on a strictly confined and conditional basis, designed to preserve procedural fairness to Associated and the integrity of the statutory hearsay framework. By electing to abandon reliance on Mr Burrows' hearsay statements and to call him as a witness, the Claimants accepted the ordinary forensic consequences of that choice: they could thereafter rely only on the admissible oral evidence he gave at trial, and not on his prior statements as substantive evidence (unless the statutory basis for admission was met). Accordingly, the permitted examination-in-chief was tightly limited to matters within the scope of the existing hearsay notice and relevant pleaded issues; no new material, documents or prior inconsistent statements could be introduced; the Civil Evidence Act regime could not be circumvented; and strict time limits were imposed on examination-in-chief, cross-examination and any re-examination ([39]-[41]). The Court also rejected, as premature and inconsistent with the statutory scheme, any attempt to treat Mr Burrows as hostile or to use re-examination to undermine the hearsay framework or to neutralise the forensic risks to the Claimants inherent in calling him as their own witness ([42]-[43]).

Appendix 2: Witness and hearsay evidence

A: Trial witnesses

A2.1. Part A summarises the evidence of witnesses (including brief background and the substance of cross-examination). Broad biographical detail relating to each Claimant is set out in the main judgment (see [3]). Findings on the issues in dispute, including conclusions on the pleaded Articles and incidents, will usually be found in the main judgment.

A2.2. The witnesses are set out in the order in which they were called to give evidence during the trial. The date under the name of each witness, in brackets, indicates the date on which the relevant witness gave evidence or, if it was over more than a day, the date on which s/he began giving evidence.

A2.3. Witnesses, who gave evidence during the trial, were giving evidence about events many years in the past. Recollection in these circumstances must be approached with appropriate caution, for the reasons explained generally in the main judgment (see [49]-[52]).

(1) Prince Harry
(21 January 2026)

A2.4. Prince Harry is the Sixth Claimant. He brings his claim on Articles (3), (13), (16), (25), (26), (28), (34), (38), (39), (43), (47), (50), (55) and (56).

A2.5. The Claimants submit that Prince Harry was a careful, candid and consistent witness. They rely on his evidence as providing a coherent and credible account of his position at the material time, including the constraints on him by reason of his role within the Royal Family, his lack of knowledge of UIG, and the extent to which attribution in articles to "*friends*" or "*sources*" misled him. They submit that he did not provide private information to journalists and that his evidence explains both his conduct at the time and the timing of the claim.

A2.6. Associated does not allege any dishonesty but submits that Prince Harry's evidence should be approached with caution. It emphasises his experience as a public figure familiar with press scrutiny and legal recourse, and contends that aspects of his account rely on hindsight and overstate the privacy or exclusivity of the information in issue. Associated submits that his evidence should be evaluated in the light of the possibility of alternative, lawful sources and his own evidence of suspicions concerning those within his social circle.

A2.7. Two discrete points arising from the evidence and submissions are recorded here for completeness and to avoid misunderstanding as to their significance.

A2.8. First, during his cross-examination Prince Harry expressed strong criticisms of Barbara Jones' journalistic methods, describing her (by reference to a 2017 email exchange) as "*a total nightmare*" and asserting that her ability to locate him in Africa was "*very suspicious*". He suggested that she obtained information by "*bribes and blagging*" and, in particular, that she had "*probably blagged one of those local rangers… with money*", characterising this as "*unlawful information gathering*".

This was not advanced as part of the pleaded case against Ms Jones. It was an allegation aired in the witness box, while giving evidence, and I treat it as reflecting Prince Harry's belief rather than as the formulation of a pleaded contention against her. The point was subsequently put to Ms Jones in cross-examination, and I address both the allegation and her response in the section of Appendix 2 dealing with Ms Jones' evidence (see [A2.416]-[A2.420] below).

A2.9. Secondly, although it is no part of Associated's case to suggest that Prince Harry gave any untruthful evidence, Associated relied in a footnote in closing submissions on historic Facebook messages disclosed by Charlotte Griffiths (located by her in 2025, after which she gave access to her Facebook account for searching). After the trial concluded, I became aware of media reporting which focused on these messages (exchanged between 4 December 2011 and 22 January 2012), in which Ms Griffiths addressed Prince Harry as "*Mr Mischief*".

A2.10. Prince Harry's evidence on this issue was confined. He accepted that he may have added Ms Griffiths as a friend on Facebook and may have provided his contact details at the time of a single social encounter. He did not accept that there was any ongoing social relationship and maintained that he did not see her socially after he discovered that she was a journalist.

A2.11. In cross-examination, Mr White KC put to Prince Harry that he had added Ms Griffiths as a friend on Facebook and exchanged friendly messages, including that he had used the name "*Mr Mischief*" in messages to her. Prince Harry firmly rejected that suggestion, stating that he had "*never used the name 'Mr Mischief'*". He was not taken in evidence to the Facebook message exchange itself, the point was taken no further, and no allegation is advanced by Associated that his evidence was dishonest. Nothing turns on this exchange for the determination of any pleaded issue. I record it only to avoid misunderstanding as to the evidential significance of these messages and how the point was deployed at trial and in submissions.

A2.12. In assessing Prince Harry's evidence overall, it was apparent that he wished the Court to understand the personal impact of the matters in issue. At times, this led him beyond giving factual evidence into advancing arguments on the issues, and exchanges followed with Mr White KC in that vein. As I indicated to Prince Harry at the time, that is not uncommon: many litigants feel a strong instinct to argue their case themselves. However, when giving evidence, that is not a burden they are required to carry. The responsibility for advancing the party's case rests with the advocate. Overall, this did not affect the quality of Prince Harry's evidence, which I accept. As with each of the Claimants, Prince Harry has limited evidence to give on the contentious matters in dispute.

(2) Elizabeth Hurley
(22 January 2026)

A2.13. Elizabeth Hurley is the Second Claimant. She brings her claim on Articles (4), (5), (6), (7), (8), (9), (10), (14), (22), (23), (32), (41), (42), (48) and (52).

A2.14. The Claimants submit that Ms Hurley was a candid and truthful witness whose evidence was consistent and should be relied upon. They emphasise that she gave clear

evidence that the relevant information was private, was not provided by her or on her behalf, and could only have come from unlawful sources.

A2.15. Associated submits that Ms Hurley's evidence should be evaluated with caution. It contends that information may have been disseminated within her social circle and could have reached journalists through indirect and lawful means. In particular, it relies on her evidence that she had "*no idea*" whether others within her circle may have provided information to the press and accepts that disclosure could occur through informal chains of communication.

A2.16. Ms Hurley gave her evidence in a clear and direct manner. I accept her evidence. It was clear that she had been deeply shocked when she learned of Mr Burrows' allegations concerning her. As with each of the Claimants, she has limited evidence to give on the contentious matters in dispute.

(3) Sadie Frost
(26 January 2026)

A2.17. Ms Frost Law is the Seventh Claimant. She brings her claim on Articles (11), (12), (15), (17), (19), (20), (24), (27), (30), (31) and (44) and incidents (18) and (36).

A2.18. The Claimants submit that Ms Frost Law was a candid witness who gave a clear account of the impact of the matters in issue upon her and of her lack of knowledge of UIG at the time. They rely on her evidence as demonstrating that the information published was private and not provided by her.

A2.19. Associated submits that Ms Frost Law's evidence should be approached with caution. It does not allege dishonesty but contends that aspects of her account rely on hindsight and are not supported by contemporaneous material, and that the information in issue may have been obtained from alternative sources.

A2.20. Ms Frost Law gave her evidence in a straightforward manner. Generally, I accept her evidence. As with each of the Claimants, she has limited evidence to give on the contentious matters in dispute. There are instances where her recollection is not consistent with the contemporaneous documents, and I prefer the contemporaneous documentary record where there is conflict. This is not a criticism of her honesty, but reflects the well-recognised fallibility of memory over time.

(4) Simon Hughes
(27 January 2026)

A2.21. Sir Simon is the Fifth Claimant. He brings his claim in connection with the Miskiw/Anderson Emails and the UIG they are said to demonstrate (incident (36)).

A2.22. The Claimants submit that Sir Simon Hughes gave careful evidence explaining his lack of knowledge of UIG at the time and the basis upon which he later came to understand the matters in issue.

A2.23. Associated submits that his evidence should be treated with caution and assessed against the contemporaneous documentary record and the broader evidential context, including issues of timing and knowledge.

A2.24. Sir Simon Hughes gave his evidence in a careful and considered manner. As with each of the Claimants, he has limited evidence to give on the contentious matters in dispute. He was, however, challenged in cross-examination on issues going to his knowledge and timing for limitation purposes. Insofar as they require determination, those matters are addressed in the main judgment. There are instances where his recollection of events is not consistent with the contemporaneous documentary record, and I prefer that record where there is conflict. This is not a criticism of his honesty, but reflects the well-recognised fallibility of memory over time.

(5) Dr Evan Harris
(28 January 2026)

A2.25. Dr Evan Harris is a former Member of Parliament and medical doctor who subsequently worked as an advisor and later director at the organisation Hacked Off. His evidence describes his involvement in campaigning on press misconduct issues, including participation in the Leveson Inquiry and subsequent work concerning press regulation and UIG by newspapers.

A2.26. Dr Harris provided three witness statements in the proceedings. His evidence addresses: (i) his role in Hacked Off and the investigative work undertaken with journalists, particularly Graham Johnson; (ii) the circumstances in which information concerning potential claims was communicated to, or obtained from, Claimants including Sir Simon Hughes and Ms Frost Law; (iii) the purpose and context of Byline Investigates publications; and (iv) the allegations raised by Associated concerning what is described as a "*limitation camouflage scheme*," which he expressly refutes.

A2.27. The Claimants rely on Dr Harris' evidence as providing a detailed and contemporaneous account of the investigative and campaigning work that led to the identification of potential claims. They submit that his evidence explains the role of Hacked Off and associated journalists in uncovering UIG and supports the case that relevant information did not come into the public domain, or into the Claimants' knowledge, until much later.

A2.28. Associated made extensive submissions as to Dr Harris' evidence. It contends that his evidence should be approached with particular caution, submitting that his role in the Hacked Off campaign, his close working relationship with Mr Johnson, and his involvement in assisting potential claimants give rise to issues as to objectivity. Associated relies in particular on documentary material (including email correspondence) to submit that Dr Harris was actively involved in the timing and presentation of information to potential claimants and that aspects of his account are inconsistent with contemporaneous documents. It submits that the Court should scrutinise carefully his explanations concerning the purpose of communications, including those referring to limitation issues and the publication of material on Byline, and should prefer contemporaneous documents where they differ from his recollection.

A2.29. Dr Harris was, in many respects, a highly unusual witness. Rather than giving evidence from present recollection of events, he frequently assumed the role of a narrator of what he considered the contemporaneous documents demonstrated. I am satisfied that this general mode of giving evidence was not the product of any intention to mislead the Court. On the contrary, I readily accept that, in the way he approached

giving evidence, he believed he was being conscientious and assisting the Court as best he could. That assessment concerns his approach to giving evidence generally. It does not qualify the specific findings I make in the main judgment about his email of 11 July 2019 and the proposed use of Byline publication in relation to limitation (see main judgment [1544]-[1546], [1565]-[1567]).

A2.30. However, Dr Harris's evidence provides a clear illustration of the risks inherent in reconstructed memory. I find that he has little, if any, independent recollection of several of the key events about which he was asked. When pressed on detail, his answers commonly took the form that he did not remember what had occurred, but sought instead to explain what he believed must have happened, based on his subsequent review of the documentary record.

A2.31. This feature of his evidence led, on occasion, to a tendency to move beyond recollection into reconstruction. That difficulty was expressly identified during his cross-examination. The Court cautioned against the risk that he was engaging in "*ex post facto*" deduction from documents rather than assisting the Court with his actual recollection, emphasising that speculation of that kind blurred the distinction between memory and inference. Dr Harris accepted that this was the position and acknowledged that, in several instances, he was deducing events from documents rather than recalling them. In one particular area – his explanation of his working relationship with Graham Johnson – Dr Harris has, in my judgment, been particularly prone to reconstruction, advancing an account that is not supported by the contemporaneous documents, properly considered, nor by the overall probabilities to be derived from the documentary record.

A2.32. The consequence of this approach was that Dr Harris often expressed views with a degree of confidence as to what had occurred, notwithstanding the absence of any true recollection. In my assessment, that confidence was sometimes misplaced. A clear example is provided by his evidence concerning the "*Operation Bluebird*" memorandum. In his oral evidence, Dr Harris maintained that he had not seen the document and was merely commenting on the views of Mr Johnson. That evidence was shown to be incorrect when contemporaneous emails demonstrated that he had in fact received the draft, edited it and returned a revised version containing his own contributions. When confronted with those documents, he accepted that his earlier evidence was mistaken and the product of his failure of recollection.

A2.33. I do not treat that incident as evidence of dishonesty. I accept Dr Harris's explanation that the error arose from a genuine (but incorrect) belief that he had not previously seen the document. It is, however, a powerful example of the dangers inherent in his approach to giving evidence. It demonstrates how a witness who lacks independent recollection may, through careful and conscientious reading of documents, come to hold a firm but erroneous belief as to what occurred.

A2.34. More generally, there were several passages in Dr Harris's evidence in which he was unable to identify the factual basis for statements he had made at the time or recorded in contemporaneous documents. When asked to explain them, he frequently accepted that he did not know why he had used particular formulations, or that he could only offer a reconstruction or assumption as to what must have been intended. This further reinforces my conclusion that his evidence was often not based on recollection but on retrospective interpretation.

A2.35. The email of 11 July 2019 concerning Byline publication and limitation is a distinct and important example. As explained in the main judgment, I do not accept Dr Harris' later attempt to place a different construction on that email. I rely on the words of the contemporaneous document. For the reasons set out in the main judgment ([1544]-[1546], [1565]-[1567]), I find that, in that specific instance, Dr Harris appreciated the limitation difficulty and made an improper and dishonest proposal to use Byline publication to present a later public point of knowledge and thereby obscure the earlier availability of the relevant facts.

A2.36. Drawing these matters together, I approach Dr Harris' evidence with caution. Where his evidence is supported by the contemporaneous documentary record, it may be accepted. However, where it depends upon his asserted recollection or his reconstruction of events, I do not consider it safe to do so. The overall position is that I cannot rely upon Dr Harris' account unless it is corroborated by contemporaneous documentary material. I do not make a general finding that Dr Harris is a dishonest person, nor do I find that his evidence to the Court was generally dishonest. But that general assessment is subject to the specific finding I make in the main judgment concerning the email of 11 July 2019. In that particular respect, and for the reasons there given, I find that his proposal was improper and dishonest.

(6) Baroness Lawrence
(2 February 2026)

A2.37. Baroness Lawrence is the First Claimant. She brings her claim on Articles (1), (2), (21), (45) and (46).

A2.38. The Claimants submit that Baroness Lawrence was a careful and dignified witness, whose evidence provided a clear account of the personal impact of the matters in issue and of her lack of knowledge of the alleged unlawful activity at the time.

A2.39. Associated submits, in its written closing submissions, that Baroness Lawrence was "*a straightforward witness who sought to assist the Court*". It nevertheless contends that her case is unsupported by the evidence and should be assessed by reference to the contemporaneous material and the alternative explanations advanced for the sourcing of the information.

A2.40. Baroness Lawrence gave her evidence in a measured and straightforward manner. I accept her evidence. As with each of the Claimants, she has limited evidence to give on the contentious matters in dispute.

(7) James Hanning
(2 February 2026)

A2.41. James Hanning is a journalist and author with approximately forty years' experience, including as deputy editor of the *Independent on Sunday*. His evidence relates to his interactions with Christine Hart and his subsequent understanding of her activities in relation to the *Daily Mail*, and particularly Article (1) and the alleged blagging of Baroness Lawrence by Ms Hart.

A2.42. He provided a witness statement, dated 7 January 2026. In that statement, he describes: (i) his journalistic work and interest in UIG; (ii) his collaboration with Christine Hart

in connection with proposed investigative work; (iii) her account to him that she had been tasked to obtain information from Baroness Lawrence by posing as a journalist; and (iv) his recollection of invoices and related documentation corresponding to that activity.

A2.43. The Claimants rely on Mr Hanning's evidence as corroborative of their case that UIG took place, and in particular as supporting the allegation that Christine Hart obtained information by deception for publication.

A2.44. Associated submits that Mr Hanning's evidence is hearsay, being based on what he was told by Christine Hart, and should accordingly be treated with caution. It emphasises that Ms Hart has not given evidence and that Mr Hanning's account depends upon recollection of conversations taking place many years after the events in question. It further submits that his evidence should be evaluated in light of contemporaneous documents and the absence of direct evidence from the primary source.

A2.45. Mr Hanning gave his evidence carefully and appeared to be doing his best to assist the Court. I accept that he was genuinely trying to recall events, some of which had occurred many years before. He did not seek to embellish his account and, where his recollection was uncertain, he generally acknowledged the limits of his memory.

A2.46. However, the passage of time has had a material impact on the reliability of Mr Hanning's recollection. Much of his evidence concerned events that occurred decades earlier, and it was apparent in cross-examination that his memory for detail was in places fragile and susceptible to error. On several occasions, propositions put to him demonstrated that his recollection was incomplete or inaccurate.

A2.47. In particular, the cross-examination explored the circumstances of the April 2022 meeting with Ms Hart and the extent to which the conversation was shaped by prompting, prior circulation of material, and the manner in which topics were introduced. This questioning revealed that Mr Hanning was, at least to some extent, vulnerable to being wrong-footed when his recollection was tested against the underlying context and materials. That does not diminish his honesty, but it does affect the weight that can safely be attached to his evidence.

A2.48. I also bear in mind that the lunch conversation was itself a retrospective discussion about events said to have taken place many years earlier. Mr Hanning's evidence about that conversation is therefore one step removed from the primary events in question. His account necessarily depends upon his recollection of what Ms Hart said, rather than on any contemporaneous record of the underlying events.

A2.49. In those circumstances, I approach Mr Hanning's evidence with appropriate caution. Where his evidence is supported by the contemporaneous documentary record or is otherwise inherently plausible, it may be accepted. However, where it depends upon recollection of detail – particularly in relation to what was said and how it was said – I do not consider it safe to rely upon it without corroboration.

(8) Imran Khan KC
(2 February 2026)

A2.50. Imran Khan KC is a barrister who has acted as longstanding counsel to Baroness Lawrence since 1993 in relation to the Stephen Lawrence case.

A2.51. For trial, he provided a second witness statement (originally dated 17 October 2025 and amended on 16 January 2026), which expressly incorporates an earlier statement in the proceedings. His evidence addresses: (i) his long-standing professional relationship with Baroness Lawrence; (ii) the circumstances of what is described as her "*personal watershed moment*" in January 2022; (iii) the information then provided to him concerning alleged unlawful activity by Associated; and (iv) the impact of those allegations and the sense of shock and betrayal described by Baroness Lawrence.

A2.52. The Claimants rely on Mr Khan's evidence as explaining the timing of Baroness Lawrence's knowledge of the matters giving rise to the claim and as supporting her account of discovery of the alleged wrongdoing.

A2.53. Associated submits that Mr Khan's evidence should be considered in the context of the limitation issues in the case and the documentary record. It contends that the Court should examine carefully whether his account of when relevant information became known is consistent with contemporaneous material and with the broader evidential picture.

A2.54. Mr Khan was a careful and reliable witness, who gave considered answers and remained within the limits of his recollection. His evidence was not materially challenged or impeached in cross-examination. Although it is relevant only to a relatively narrow aspect of the case, I accept it where it bears upon the issues I must decide.

(9) Daniel Portley-Hanks
(3 February 2026)

A2.55. Daniel Portley-Hanks (also known as "Danno" Hanks) is a United States-based private investigator who states that he carried out investigative work for UK newspapers, including the *Daily Mail* and *Mail on Sunday*, over a period of approximately 20 years from the early 1990s to around 2013.

A2.56. He provided an Amended second witness statement, dated 16 January 2026. His evidence includes: (i) a detailed account of his career as a private investigator; (ii) descriptions of the methods used to obtain personal information (including database searches, "*cell breaks*" and obtaining information by deception); (iii) his working relationship with journalists associated with the Mail titles; and (iv) specific examples of assignments said to have been undertaken and the information obtained for publication.

A2.57. The Claimants rely on Mr Portley-Hanks' evidence as direct evidence of UIG on behalf of Associated and as illustrating the methods by which such information was obtained.

A2.58. Associated submits that his evidence should be approached with considerable caution. It emphasises that his account relates to events many years in the past, involves admissions of unlawful conduct, and must be carefully scrutinised against contemporaneous documents and other evidence. It further submits that the Court should examine the reliability of his recollection and the extent to which specific allegations are supported by documentary material.

A2.59. Mr Hanks gave his evidence in a confident manner and was plainly familiar with the general nature of the work he carried out over many years as a private investigator in the United States. I am satisfied that he was doing his best to assist the Court, albeit within the limitations of his recollection.

A2.60. However, a significant feature of Mr Hanks' evidence was that he gave it largely at a general level. Much of his testimony consisted of descriptions of his usual working practices – how he would receive requests, conduct searches and pass on information – rather than a reliable recollection of the specific events in issue. When pressed on individual examples, he frequently accepted that he did not recall the particular tasking or article, and that his account was based on what he believed must have occurred.

A2.61. In those circumstances, Mr Hanks was prone to reconstruction. On several occasions, he sought to fit his general working methods to the particular allegations advanced in the proceedings. When those accounts were tested against contemporaneous material – including dates, metadata, and the documentary provenance of reports – they were shown in some instances to be mistaken or unsupported. In response, Mr Hanks accepted that parts of his evidence were speculative or based on assumption rather than recollection.

A2.62. That process was particularly evident in cross-examination, where Mr Hanks was, at times, wrong-footed when his asserted recollections were compared with the underlying documents. This did not suggest any lack of honesty, but it demonstrated the limits of his memory and the unreliability of reconstructed accounts formed many years after the events in question.

A2.63. I also take into account that Mr Hanks' evidence was, in part, formed or refreshed by reference to materials shown to him long after the events, including documents and articles gathered by others. This provides a further reason to approach his evidence with caution, as it increases the risk that his account reflects a retrospective narrative rather than an independent recollection.

A2.64. It is, however, important to recognise the legal and practical context in which Mr Hanks was operating. His work was carried out as a licensed private investigator in the United States over a lengthy period. His evidence demonstrates that he regarded much of his activity – such as obtaining information from databases or public records – as lawful under US law at the time. He also distinguished between the acquisition of information and its subsequent transmission to media organisations. That context explains why his services were used by UK newspapers, but it also means that his understanding of legality is not determinative of the issues before this Court.

A2.65. Drawing these matters together, I treat Mr Hanks' evidence with caution. Where it is supported by the contemporaneous documentary record, or where his account of general practice assists in understanding how information might have been obtained,

it may be of value. However, where he seeks to attribute particular acts, instructions, or outcomes to specific individuals or publications based on recollection, I do not consider it safe to rely upon such evidence without clear corroboration.

(10) Graham Johnson
(4 February 2026)

A2.66. Graham Johnson is an investigative journalist, author and documentary producer with experience working for national newspapers including the *News of the World* and *Sunday Mirror,* and subsequently as an independent journalist investigating UIG by UK newspapers.

A2.67. He provided three witness statements dated 24 December 2025, 17 October 2025 and 25 January 2026. His evidence addresses: (i) his investigations into UIG; (ii) his interactions with sources, including Gavin Burrows; (iii) his work in connection with Byline Investigates; (iv) his dealings with Dr Harris and others in relation to potential claims; and (v) his response to allegations advanced by Associated concerning what is described as a "*limitation camouflage scheme*", which he denies.

A2.68. The Claimants rely on Mr Johnson's evidence as central to the development of their case. They submit that it provides a detailed account of investigative work uncovering UIG, explains how relevant evidence came to light, and supports the timing of the Claimants' knowledge of their claims.

A2.69. Associated makes extensive submissions in relation to Mr Johnson's evidence. It submits that his evidence should be treated with caution, emphasising his role as an investigative journalist with a particular focus on exposing press misconduct and his close working relationship with Dr Harris and the Claimants' team. Associated relies on the contemporaneous documentary record, including emails and other communications, to contend that his account of events and motivations is not accurate in all respects. In particular, it submits that the Court should scrutinise his explanations of his interactions with potential claimants, the purpose and timing of publications, and his denial of any scheme relating to limitation, and should prefer the documentary record where it conflicts with his recollection.

A2.70. Mr Johnson was a guarded witness, who demonstrated a detailed familiarity with the underlying documentation, but whose evidence was, in material respects, shaped by reconstruction rather than reliable recollection. Although I do not consider that Mr Johnson was deliberately seeking to mislead the Court, his evidence was at times unconvincing and, in several respects, internally inconsistent and inconsistent with the contemporaneous documents. In addition, aspects of his evidence appeared to reflect or adopt themes advanced in Dr Harris' evidence which were not supported by the contemporaneous material.

A2.71. His credibility was materially undermined in cross-examination by several examples. In relation to his meetings with Mr Burrows and Ms Sangani in March 2021, his account appeared in places to be speculative and unsupported by any contemporaneous record. When questioned about payments he had made to Mr Miskiw and Mr Mulcaire between 2015-2016, his attempt to characterise them as "*sources*" rather than "*potential witnesses*" was unconvincing; they were both, as Mr Johnson well understood. Likewise, when asked about his work in connection with

potential claimants, including the objectives of the investigation, his answers were evasive and unconvincing, particularly in seeking to distance himself from the litigation dimension of the work notwithstanding his own close involvement in gathering material that he recognised, through his working partnership with Dr Harris, was very likely to be used for that purpose.

A2.72. More broadly, there was an artificiality in Mr Johnson's evidence, arising from his effort to maintain a rigid separation between journalism and litigation. The contemporaneous documents do not provide any support for that distinction. Rather, they demonstrate a single course of conduct, pursued over time, which combined both journalistic and litigation objectives. Whilst those objectives may have progressed at different speeds, been subject to differing prioritisation, and were not always identical, the documents do not suggest any material divergence or tension of the kind advanced in the oral evidence.

A2.73. These aspects of Mr Johnson's evidence are, in large part, of peripheral relevance to the central issues I must determine, bearing principally on the limitation arguments. Nevertheless, insofar as it is relevant, I approach his evidence with caution and do not accept it where it is inconsistent with the contemporaneous documentary record or with the broader probabilities of the case.

(11) David Furnish
(5 February 2026)

A2.74. Mr Furnish is the Fourth Claimant. He brings his claim on Articles (5), (7), (33), (43), (49), (51), (52), (53), (54) and (57).

A2.75. The Claimants submit that Mr Furnish was a careful and credible witness whose evidence supported that of Sir Elton. They rely on his evidence as demonstrating that the information in issue was private, was not provided by him, and exceeded anything that had been placed in the public domain. They emphasise that he gave thoughtful and helpful answers and did not seek to argue every point.

A2.76. Associated does not allege dishonesty but submits that Mr Furnish's evidence should be assessed in light of contemporaneous documents and the possibility of alternative sources.

A2.77. Mr Furnish gave his evidence in a clear and measured way. The straightforward and thoughtful way he answered questions meant that he was an impressive witness. As with each of the Claimants, he has limited evidence to give on the contentious matters in dispute.

(12) Elton John
(6 February 2026)

A2.78. Sir Elton is the Third Claimant. He brings his claim on Articles (5), (7), (33), (43), (49), (51), (52), (53), (54) and (57).

A2.79. The Claimants submit that Sir Elton was a careful and candid witness who gave straightforward and honest evidence about his private affairs and the extent of any

information he provided to others. They emphasise that he was distressed by the matters in issue but nevertheless gave clear and reliable evidence to assist the Court.

A2.80. Associated does not allege dishonesty but submits that Sir Elton's evidence must be considered in the context of the broader evidential picture, including contemporaneous material and the possibility of alternative lawful sources of the information in issue.

A2.81. Sir Elton gave his evidence in a straightforward and considered manner. At times, he appeared to find the limited extent to which he was questioned by Associated to be frustrating, which is not uncommon in an adversarial process. As with each of the Claimants, he has limited evidence to give on the contentious matters in dispute.

(13) Mark Thomson
(9 February 2026)

A2.82. Mark Thomson is a solicitor advocate of the Senior Courts and a Director of Thomson Heath Jenkins & Associates. He qualified in 1988 and was in practice as a solicitor at Schilling and Lom and then Carter Ruck before co-founding Atkins Thomson. He has substantial experience of litigation against media organisations and, over the last decade, has been involved in claims against Mirror and News Group Newspapers.

A2.83. He acted for Sadie Frost Law between 2011 and 2019 in (i) NGN UIG claims, (ii) MGN UIG litigation and related proceedings, and (iii) a 2016 libel complaint to Associated. He also acts for Sir Simon Hughes (and alongside the claim of Sadie Frost Law) in these proceedings.

A2.84. He provided several witness statements during the proceedings, but for trial the key witness statements are that dated 17 October 2025 (in Ms Frost Law's claim) and a further statement dated 25 January 2026 responding to Associated's case on limitation and specific allegations that he was party to what has been termed the "*limitation camouflage scheme*", which he denies.

A2.85. Mr Thomson gives evidence about a brief meeting, on 14 April 2016 at his Fleet Street office, attended by himself, Sadie Frost Law, and Dr Evan Harris. He also addresses his later position, in January 2019, following Byline publications concerning Ms Frost Law and the *Mail on Sunday*, including his view at that time that he had not seen "*hard evidence*" sufficient to bring a claim until later. He states that he did not see the 2006 Miskiw/Anderson emails and sufficient evidence to bring a claim until 2022.

A2.86. The Claimants rely on Mr Thomson as a professional witness of fact on limitation/knowledge issues, including the state of knowledge of his clients and his own evidence that he did not see key material (including the Miskiw/Anderson emails) until 2022; and they rely on his denial of any limitation camouflage scheme.

A2.87. Associated advances a positive case (in its pleadings and submissions) that Mr Thomson was involved in (or at least his evidence supports) earlier knowledge for limitation purposes and that he was party to, or implicated in, a limitation camouflage scheme; and it submits that his account should be tested against the contemporaneous documentary record.

A2.88. I approach Mr Thomson's evidence with a degree of caution. He is an experienced solicitor with long involvement in litigation against media organisations, and his account therefore required careful scrutiny against the contemporaneous documentary record.

A2.89. In his oral evidence, Mr Thomson was at times casual in his responses and occasionally dismissive of material put to him in cross-examination. When challenged with documents and accounts inconsistent with his narrative, he repeatedly rejected them in emphatic terms without grappling with the detail. Thus, when shown an email describing the meeting outcome as agreement to "*launch an action*", he dismissed it as "*completely untrue*", "*simply made up*", and "*not true*". Similarly, when confronted with an email asserting that investigators worked closely with his firm, he responded: "*It's simply wrong… just not accurate… another inaccurate email*". This tendency to respond by broad repudiation, rather than close engagement with the documentary content, materially affected the weight I could attach to his evidence where it conflicted with contemporaneous records.

A2.90. The principal difficulty with Mr Thomson's evidence, however, lies not in demeanour but in its consistency with the contemporaneous record. On several important issues, his account was at variance with documents generated at, or shortly after, the relevant events, and he did not provide a satisfactory explanation for the divergence. In reaching that conclusion I have taken into account the parties' submissions on "*limitation camouflage*" in relation to Ms Frost Law and the April 2016 meeting.

A2.91. First, as to knowledge and awareness, I found it difficult to accept Mr Thomson's evidence that he was unaware of work within his firm relating to potential claims against Associated being undertaken by Mr Heath. In cross-examination he accepted that, in 2016, a claim against Associated for UIG would have been "*a significant development*". Yet when taken to contemporaneous material describing Mr Heath as "*the lawyer… lined up to sue the Mail for hacking*", he repeatedly answered, in substance, "*I was not aware… I can't really comment… I just wasn't aware of it*", and said he had been "*shocked*" when he later saw disclosure showing "*all this activity going on*". He also sought to explain how such matters might not be shared within a small firm by reference to "*information barriers*" and sensitivities. I did not find that explanation convincing on the evidence, particularly given the nature of the work and the significance that Mr Thomson himself accepted such litigation would have represented for the firm.

A2.92. Secondly, the contemporaneous communications, in early April 2016, are difficult to reconcile with Mr Thomson's account of the 14 April 2016 meeting. He accepted that he received the text message of 4 April 2016 which referred to meeting him "*adjacent to Sadie… meeting as is similar evidence on Daily mail*". His explanation was that he assumed this was "*exaggerating*" and that, at the meeting, Dr Harris said "*there's no evidence*" and instead wanted the Mulcaire notes. That was his case, and he maintained it firmly; indeed, when asked by me whether he had a clear recollection of being told "*there is no evidence*", he answered: "*Yes, I do*", and said that he and Ms Frost Law both left the room to discuss their "*disappointment*". But the difficulty remains that the contemporaneous text expressly spoke of "*similar evidence*" (and the surrounding context was a proposed meeting linked to the Frost Law meeting), yet Mr Thomson's evidence was that there was no evidence at all and that the meeting was "*a complete anti-climax*".

A2.93. I add this. The wider chronology sits uneasily with Mr Thomson's "*no evidence/anti-climax*" account of the 14 April 2016 meeting. Associated relied on evidence that, on 11 February 2016, Mr Johnson and Dr Harris obtained the Miskiw/Anderson emails directly from Mr Miskiw, who explained that they were "*a series of emails to Chris Anderson… relating to… Simon Hughes*" and that he had obtained the information through "*Mulcaire hacking family and friends*"; and that the chain also referred to communications involving Ms Frost Law and her nanny. Associated also relied on evidence that Dr Harris read the emails that same day.

A2.94. The evidence, relied on by Associated, further described immediate follow-up steps. It included that, on the same day, Dr Harris and Mr Johnson began investigations into the implications of the emails, including approaching Mr Mulcaire about the targeting of individuals referred to in the emails, and that Mr Mulcaire "*recalled the name… instantly*" and said he had "*hammered*" the relevant voicemails. It also included that Dr Harris proceeded to contact potential victims directly, and that he requested an urgent conversation with Mr Sherborne "*about another matter (Daily Mail hacking) that I could not raise last night*", which Associated contended was prompted by the emails and related Mulcaire material.

A2.95. In the same vein, Associated relied on contemporaneous communications showing that the emails were treated as a material development. It relied, for example, on Dr Harris's contemporaneous email to Hugh Grant, in March 2016, describing his role as "*contacting victims to persuade them to instruct lawyers to sue the arse off the Mail*", and stating that they had "*Heather Mills, Simon Hughes and Sadie Frost in the frame*". It also relied on Mr Johnson's email, of 15 April 2016, referring to "*ammo in stock*" and asserting possession of "*smoking gun*" emails.

A2.96. I recognise that the Claimants advanced a different explanation: that Dr Harris did not show documents to Ms Frost Law (or her lawyers) because they were treated as Mr Johnson's confidential journalistic materials; that Dr Harris regarded his March 2016 email as "*rash*" or as designed to secure a meeting; and that Mr Johnson would not have provided his material at that stage because doing so would have lost exclusivity. I deal elsewhere with the extent to which the evidence supports (or does not support) the asserted rigidity of any such delineation between journalistic and legal purposes (see [A2.31], [A2.72] and main judgment [1525], [1533]-[1535] and [1555]). In short, I accept there may have been a broad separation of functions reflecting the two men's differing roles and objectives; but I do not accept that this amounted to a rigid barrier preventing use of the material for legal evaluation and contacting the individuals believed to be affected. That proposition has been elevated after the event, and it finds no support in the contemporaneous documents. It is also notable that, on Mr Thomson's own account of the April 2016 meeting, Dr Harris did not suggest that he was unable to show evidence because Mr Johnson's consent was required.

A2.97. Even allowing for the Claimants' explanation, the sequence of events relied upon by Associated (including immediate investigative steps, an urgent approach to counsel, and contemporaneous communications with backers) strongly suggests that the discovery of the Miskiw/Anderson emails was regarded by Dr Harris and Mr Johnson as a very significant evidential development, which they acted upon at once. Against that backdrop, and given that the meeting with Mr Thomson had been convened expressly to "*show you the evidence*", I do not accept that the meeting would have proceeded without any meaningful discussion of what had been discovered (whether

by showing the emails, or by describing them with sufficient substance to enable professional evaluation).

A2.98. The contemporaneous records of the 14 April 2016 meeting contradict, in material respects, Mr Thomson's description of it. He sought in his witness statements to emphasise that the meeting was "*necessarily brief*", and later described it as occurring in "*the lunch break*" of a hearing. In cross-examination he was challenged on whether this was playing down the time available; he denied doing so but said: "*It was a short meeting, because Evan promised to provide information and evidence and he didn't, and there wasn't much point to it…*", and he described it as "*a fairly typical Evan meeting, when he promises stuff and doesn't deliver and in fact what he wants is evidence to be provided himself*". He also relied on the fact that he "*didn't open a file*" and "*didn't make a note*" as confirming his recollection that it was "*brief and informal*". However, when it was put to him that the meeting had been arranged for the purpose of showing "*highly significant evidence*", he accepted that was the stated purpose, and accepted that he read the earlier email describing "*evidence*" and proposing to "*show you the evidence*".

A2.99. The same tension is exposed by Mr Thomson's own explanation for why he made no note and took no follow-up steps. He accepted he would "*usually make a note*", but said he did not do so because he "*got nothing*" and it was "*such an anti-climax*". He accepted that, in hindsight, he "*probably should have made a note*", but did not. Further, when faced with the 25 April 2016 email stating "*These are the actions we agreed at our meeting with Mark T…*", Mr Thomson did not dispute that he was copied and received it, but explained his failure to correct it by saying: "*I didn't want to irritate him… I wanted to be calm and professional… I just wanted him to produce the evidence, which he never did*". He described such action lists as "*fairly typical of Evan*", adding that "*you need to be really careful to see whether it's accurate or not*", and said he should (in hindsight) have written back saying he had not agreed the actions. That evidence is important because it amounts to an acceptance that he allowed (without correction) an email to stand which, on his account, was materially misleading as to what he had agreed to do.

A2.100. More generally, I have regard to the pattern in Mr Thomson's evidence whereby, in the face of contemporaneous documents suggesting a greater degree of knowledge, engagement or agreement on his part, his response was repeatedly to deny recollection, or to deny accuracy in broad terms. Thus, when faced with the note of action points said to follow from the meeting, he repeatedly asserted that "*the only thing that was agreed was that we would provide the Mulcaire notes*", and he characterised other recorded steps (such as contacting Amanda Owen) as "*seriously inaccurate*" and "*not agreed*". In the same vein, he rejected as "*completely untrue*" the statement (in a 2017 email) that he and Mr Heath were "*co-ordinating the legal side on the Mail*", and rejected as "*not accurate*" the later email describing the April 2016 discussion as involving "*a potential claim*". While such explanations cannot be excluded, they require careful scrutiny where they stand in tension with contemporaneous records created at the time.

A2.101. I also take into account that, on his own evidence, Mr Thomson did not take steps one might ordinarily expect of a solicitor in his position if the matters were as he described. He accepted that the meeting had been arranged for him to be shown evidence; he accepted that evidence would have been of "*real significance*" to his client; and he

accepted that he wanted copies of the evidence. Yet he did not make a note; he did not open a file; he did not write contemporaneously to seek the promised evidence; and he did not correct (at the time) what he now says was an inaccurate action-points email which attributed actions to him. His explanation was essentially that he was waiting for the promised evidence and did not wish to "*annoy*" Dr Harris. I do not regard that as a satisfactory explanation given Mr Thomson's experience and the importance of the subject matter.

A2.102. Drawing these matters together, I do not find that Mr Thomson sought deliberately to mislead the Court. However, on several significant issues I consider that his evidence is unreliable and cannot be accepted where it is inconsistent with, or not supported by, the contemporaneous documentary record. Where such inconsistencies arise, I prefer the contemporaneous documents. That conclusion does not require, and I do not make, a finding that Mr Thomson was party to any limitation camouflage scheme; that issue is addressed separately in the main judgment.

(14) Anjlee Sangani
(10 February 2026)

A2.103. Anjlee Sangani is a solicitor and, until January 2026, she was a consultant at Gunner Cooke LLP. Until her departure from that firm, Ms Sangani had been the solicitor acting for the First, Second, Third and Fourth Claimants in these proceedings.

A2.104. Her trial evidence is directed principally to Associated's "*authenticity challenge*" to the 16 August 2021 witness statement attributed to Gavin Burrows, the preparation/signing process for that statement, and (more generally) knowledge issues.

A2.105. She provided a second witness statement, dated 12 December 2025, responding to the authenticity challenge, and a third witness statement, dated 1 February 2026, after reading Associated's written opening submissions, addressing (a) Burrows/authenticity; (b) her firm coming off the record; and (c) knowledge.

A2.106. In her 12 December 2025 statement, Ms Sangani identifies as central an email from Gavin Burrows to Graham Johnson, dated 16 August 2021, containing a OneDrive link, and she states that the link "*still contains*" the 16 August 2021 witness statement as signed by Mr Burrows.

A2.107. She explains that the 16 August 2021 witness statement was drafted based on (among other things) Mr Johnson's memos, an affidavit of 5 March 2021, and documents said to have been signed on 29 March 2021, and she identifies which elements she says she was involved in drafting/preparing.

A2.108. She describes meeting Mr Burrows (including at his home on 8 March 2021 and on 22 March 2021 with David Sherborne and Graham Johnson) and states she believed (and still believes) certain signatures on March 2021 documents are authentic. She also states that the "*proofing*" of Mr Burrows included steps to check veracity (client instructions; locating documents; obtaining corroboration from former associates). She states that neither she nor her firm paid inducements to Mr Burrows or any other witness, nor authorised any third party to do so.

A2.109. In her 1 February 2026 statement, she expands the chronology: she states she met Mr Burrows in person at least five times in March 2021 (including 1, 8, 15, 22 and 29 March 2021) and that she witnessed Mr Burrows "*wet sign*" two key documents on 29 March 2021.

A2.110. A distinct feature of Ms Sangani's evidence concerned the March 2021 documents described as the "*Signed four-page note*" and the schedule/table headed "*Signed admitted unlawful articles*" dated 29 March 2021. In her third witness statement, Ms Sangani stated that she witnessed Mr Burrows sign both documents in person and in front of her on 29 March 2021, and that she had "*double checked*" and was "*absolutely sure*" of that.

A2.111. In cross-examination, Mr White KC tested this aspect of her evidence by reference to the fact that, in her second witness statement, she had described meeting Mr Burrows only twice (8 and 22 March 2021), and did not refer to a meeting on 29 March 2021. Ms Sangani accepted that her second statement contained that limited account, and explained that she had not refreshed her memory sufficiently at that stage. Nevertheless, she maintained in terms that she met Mr Burrows, on 29 March 2021, and that he wet-signed the two documents in front of her. Her evidence that she was present on 29 March 2021 and saw Mr Burrows sign the two documents was not challenged.

A2.112. She describes the investigative/proofing process, including her interaction with Max Mosley's lawyers and the formulation of questions to explore with Mr Burrows; she also explains why meetings took place in informal locations (including a coffee shop) and why contemporaneous note-taking and drafting practices differed from ordinary client witness statement practice.

A2.113. Ms Sangani certified the 16 August 2021 statement as having complied with PD57AC. The certification, signed by Ms Sangani, was in the following terms:

> "I hereby certify that:
>
> 1. I am the relevant legal representative within the meaning of Practice Direction 57AC.
>
> 2. I am satisfied that the purpose and proper content of trial witness statements and proper practice in relation to their preparation, including the witness confirmation required by paragraph 4.1 of Practice Direction 57AC, have been discussed with and explained to Mr Gavin Burrows.
>
> 3. I believe this trial witness statement complies with Practice Direction 57AC and paragraphs 18.1 and 18.2 of Practice Direction 32 and that it has been prepared in accordance with the Statement of Best Practice contained in the Appendix to Practice Direction 57AC."

A2.114. Practice Direction 57AC governs trial witness statements in the Business and Property Courts and is intended to ensure that such statements faithfully reflect the evidence a witness would properly give in chief. It requires that a trial witness statement must contain only relevant factual evidence within the witness's personal knowledge, expressed in the witness's own words, and not a narrative derived from documents or argument. Central to the regime is the requirement that the relevant legal

representative must take responsibility for the process of evidence-taking: ensuring that the purpose and proper content of witness statements, and proper practice in their preparation, are explained to and understood by the witness.

A2.115. The Statement of Best Practice emphasises that evidence should, so far as practicable, be obtained through non-leading questioning, recorded accurately (preferably contemporaneously), and not influenced or shaped by repeated drafting or by suggestion. The Practice Direction further requires both a witness confirmation and a solicitor's certificate of compliance, the latter certifying (i) that these matters have been explained to the witness and (ii) that the statement has been prepared in accordance with PD57AC, including its emphasis on personal recollection, proper process, and the avoidance of contamination of memory. Non-compliance may justify the court, in the exercise of its case management powers, in limiting or excluding the evidence or otherwise reducing the weight to be attached to it.

A2.116. Ms Sangani addresses her certification of the Burrows witness statement in her 1 February 2026 witness statement, including her reliance on the 16 August 2021 email/link and her statement that she signed the certificate of compliance after checking the email and viewing the electronic signature.

A2.117. She rejects as false the suggestion that her firm's coming off the record had any link to Mr Burrows' later claims of forgery; and she states that her first involvement/knowledge of evidence of unlawful acts by Associated was in December 2020 when she was alerted to Mr Burrows' confessions about targeting Elizabeth Hurley.

A2.118. The Claimants rely on Ms Sangani's evidence as establishing the provenance, preparation and signing process for the Burrows material (including rebutting the authenticity/forgery allegations) and as supporting their account of when evidence implicating Associated (via Burrows) first emerged to the Claimants' legal team (December 2020 onwards).

A2.119. Associated challenges the reliability and regularity of the process by which the Burrows 16 August 2021 statement was said to have been prepared and signed. It contends that the evidence relied upon to prove that statement is "*deeply unsatisfactory*" and fails to prove that the statement was made by Mr Burrows. Associated also advances related criticisms of the surrounding documentary record and disclosure.

A2.120. Specifically in relation to the process of preparing and certifying the Burrows witness statement as being compliant with PD57AC, Associated submits that the certification is fundamentally unsound. It contends that the statement was not taken in accordance with PD57AC and that Ms Sangani proceeded on the mistaken basis that the Practice Direction did not apply to a pre-action statement. Contrary to what the certification purports to confirm, the statement was not the product of proper solicitor-led evidence-taking, but instead was derived from material communicated through Mr Johnson and from Ms Sangani's own recollection of her interactions with Mr Burrows. In those circumstances, the important safeguard provided by a legal representative's professional duty to ensure compliance with the Practice Direction was, in substance, absent. Associated therefore submit that the statement cannot properly be regarded as a PD57AC-compliant witness statement and, for that reason

(among others), should be treated as unreliable and afforded no weight as evidence of what Mr Burrows said at the time.

A2.121. Associated do not, in their closing submissions, allege that Ms Sangani was dishonest in her evidence. Their case is instead that her evidence is unreliable: they point to the evolution of her account, the absence of detail in contemporaneous materials, and her reliance on information provided by others (in particular Mr Johnson) rather than on her own direct knowledge. They invite the Court to treat her evidence with caution on that basis, but do not advance a case of fabrication or knowing falsehood.

A2.122. Generally, Ms Sangani was not an impressive witness. She appeared to minimise, or fail properly to appreciate, the seriousness of her certification of the 16 August 2021 witness statement as compliant with PD57AC. In cross-examination she accepted that she had not explained PD57AC to Mr Burrows and that she had delegated that task to Mr Johnson, while maintaining that her certification was nevertheless appropriate because the statement was "*not supposed to be a trial witness statement*" and was taken pre-action.

A2.123. That evidence gives rise to a material concern as to the integrity of the process for which Ms Sangani was responsible. The certification she signed conveyed that, as the relevant legal representative, she had ensured that the purpose and proper content of trial witness statements and proper practice in relation to their preparation had been explained to and understood by the witness, and that the statement complied with PD57AC. Yet Ms Sangani's evidence was that she did not communicate with Mr Burrows directly in connection with the preparation and signing of the August statement, but was in contact with Mr Johnson throughout; and that the requirements of PD57AC were addressed (if at all) indirectly through Mr Johnson. The process adopted therefore lacked the core safeguard which PD57AC is designed to provide, namely solicitor responsibility for ensuring that the witness has been properly taken through the relevant requirements.

A2.124. The concerns are reinforced by Ms Sangani's inability to give a satisfactory account of how the content of the August 2021 statement was generated and protected from error. She accepted that she was not involved in the preparation of key source material (including Mr Johnson's meeting memos and the 5 March 2021 affidavit), yet maintained that the August statement was produced through an "*iterative*" process and that Mr Johnson relayed Mr Burrows' responses "*verbatim*", notwithstanding her lack of direct knowledge of what was asked and what was said when communications were mediated in that way. She also accepted that she could not recall basic details about the first meeting she later identified (including where it took place, what evidence was taken, and whether contemporaneous notes were made), and that her practice was to type up material from memory after meetings. Taken together, these features materially undermine the reliability of the account that the certification implied: namely, that the evidence had been captured fully and accurately through a process that protected its integrity.

A2.125. I do not accept Ms Sangani's evidence insofar as it suggests that the August 2021 witness statement was taken and certified in a manner that provides reliable assurance that its contents are Mr Burrows' own words. From the description given by Ms Sangani of the process whereby Mr Burrows' witness statement was assembled, it is impossible to identify what words in the witness statement were uttered by

Mr Burrows. Ms Sangani's certification of the 16 August 2021 witness statement as compliant with PD57AC was a serious error of professional judgment. Given what she knew about the circumstances in which the statement had been prepared, she should not have signed the certificate in the terms that she did.

(15) Derek Haslam
(10 February 2026)

A2.126. Derek Haslam is a retired police officer who, between 1997 and 2005, acted as a covert intelligence source for the Metropolitan Police in relation to Jonathan Rees, Sid Fillery and Southern Investigations.

A2.127. His evidence was directed to his undercover engagement with Rees and Fillery; the unlawful information-gathering methods he says Rees described or boasted of; and the relationship he says existed between Southern Investigations, corrupt police contacts and newspaper clients, including the Mail titles. He also gave evidence touching on the Stephen Lawrence investigation and Baroness Lawrence. The detail of that evidence, insofar as relevant to the allegation that Stephen Wright used John Ross as a conduit for corrupt payments to police officers, is considered in the main judgment in relation to Article (21).

A2.128. The Claimants relied on Mr Haslam as a witness with first-hand knowledge of the Southern Investigations milieu, and in particular as supporting their case that unlawful methods, including corrupt payments to police officers and the use of intermediaries such as John Ross, were employed in obtaining information for newspapers, including in the Lawrence context.

A2.129. Associated submitted that Mr Haslam's evidence was of limited reliability and little probative value. They contended that it was generalised, largely dependent on his recollection of what Rees had said, unsupported by contemporaneous documents before the Court, and insufficiently specific to support findings of UIG against Associated or any article-specific allegation. They further relied on David Wood's evidence as contradicting Mr Haslam's assertion that such matters had been reported contemporaneously to Metropolitan Police handlers.

A2.130. My assessment of Mr Haslam is that he was an honest witness doing his best to assist the Court with his recollection of events between 1997 and 2005 when he was acting as a covert intelligence source for the Metropolitan Police. There are no contemporaneous documents before the Court to support his account. Understandably, therefore, his evidence was rather generalised and, insofar as it has any potential significance for the issues in this case, largely dependent upon what he recalled being told by Rees about the work he did.

A2.131. I accept Associated's criticisms of the limited evidential value of Mr Haslam's evidence. His evidence as to having reported these matters contemporaneously to his police handlers was challenged in cross-examination and depended upon his recollection of informal reporting practices for which no documentary record exists before this Court. While I do not consider that this undermines his honesty, it further limits the weight that can properly be attached to his account. Save perhaps in relation to Baroness Lawrence's claim to have been targeted, his generalised allegations cannot assist directly with the resolution of article-specific claims.

(16) Paul Dacre
(10 February 2026)

A2.132. Paul Dacre was Editor of the *Daily Mail* from 1992 to 2018, and (in different capacities over time) Editor in Chief across Associated's titles. He has held roles connected with the press regulatory framework, including as an Editor Commissioner on the Press Complaints Commission and Chair of the Editors' Code of Practice Committee. He gave evidence to the Leveson Inquiry.

A2.133. In his evidence, Mr Dacre sets out his account of the *Daily Mail's* editorial structures, conferences, management hierarchy, and systems intended to maintain standards, including legal and managerial oversight. He explains the use of inquiry agents and the development of database-enabled searching in the early 2000s, describing (as he understood it) their use to obtain contact details for journalistic purposes and his evolving understanding of legal risks.

A2.134. He addresses, specifically, Operation Motorman and the ICO reports, stating that the second ICO report (*What Price Privacy Now?*) had substantial impact and that he was alarmed by the *Daily Mail's* position in the usage table. He describes steps taken thereafter (warnings, demands for assurances, and strengthening procedures).

A2.135. In April 2007, he said he decided to impose a ban on inquiry agents (save for a limited exception for "*legitimate specialist agencies*"), and that he relied on managing editors and senior executives to enforce this. He addresses the allegations that he lied in the evidence he gave at the Leveson Inquiry.

A2.136. In their closing submissions, the Claimants contend that Associated's witnesses, including Mr Dacre, "*closed ranks*" and deployed repeated formulations said to be inconsistent with documents. They contend that senior executives approved payment of TPIs and that the scale of payments, and documentary lacunae, support inferences of UIG. The Claimants maintain allegations that Mr Dacre misled the Leveson Inquiry in relation to denials about phone hacking and use of private detectives.

A2.137. Associated's written closing submissions contend that the Claimants' pleaded "*Leveson Lies*" allegations against Mr Dacre (together with Peter Wright and Elizabeth Hartley) were not pursued at trial in the manner pleaded, and that the core allegation that they lied to Leveson about phone-hacking was abandoned. Associated also relies on evidence from senior executives and journalists as to a culture of professional standards and layered editorial/legal review, and contends that such evidence "*completely dispelled*" any suggestion of habitual and widespread UIG targeting the Claimants.

A2.138. My assessment of Mr Dacre is that he was a straightforward and generally careful witness who, despite plainly being angered by some of the allegations advanced against Associated and its journalists, remained composed and focused in giving his evidence. A striking feature of his evidence is that he had no evidence to give on any of the specific allegations in issue in these claims. He was not directly involved in the sourcing, commissioning or publication of the Articles relied upon by the Claimants, and consistently made clear that he had no knowledge of the detail of those matters. His evidence was, therefore, necessarily of a high-level and contextual nature, directed to editorial systems, practices and his understanding at the time, rather than to the

factual issues which this Court must determine in relation to the individual claims, on which he was not a witness of fact.

A2.139. Much of the cross-examination was directed to detailed historical matters, individual journalists, particular articles, or specific payments and documents, in respect of which he had no direct knowledge. In those respects, his answers were consistently framed by the limits of his knowledge and recollection. He did not seek to speculate or reconstruct detail that he did not remember, repeatedly emphasising both the passage of time and his reliance, at the material times, on managing editors, senior executives and legal advisers. That approach appeared to me to reflect an acceptance of the proper limits of his evidence rather than any attempt to evade questions.

A2.140. He was a robust witness who resisted propositions framed at a high level of generality or which sought to attribute to him knowledge or responsibility for matters outside his remit. At the same time, he made limited and carefully expressed concessions where appropriate, including accepting that there may have been a prima facie case of unlawful activity by inquiry agents, while maintaining that he had no knowledge that Associated journalists were themselves acting unlawfully. His evidence also made clear that, at the time of the Leveson Inquiry, his principal focus was on the issue of phone hacking, which he regarded as the central concern, and that other matters, including "*blagging*", did not receive the same degree of attention.

A2.141. As to the alleged "*Leveson Lies*", although the Claimants' pleaded case advanced allegations of knowing falsehoods, the cross-examination of Mr Dacre proceeded on a materially narrower and more diffuse basis. The questioning ranged widely over (among other things) the scale and nature of the use of enquiry agents/private investigators, the implications of the Operation Motorman material, and the extent to which those matters were consistent with the high-level assurances of professional standards given by senior management. A recurrent focus was Mr Dacre's own position that, at Leveson, he accepted there was "*a prima facie case*" that Associated "*may have broken the Data Protection Act*", while maintaining that he had not known that journalists were themselves acting unlawfully and that he regarded the allegations of more serious criminality (as he put it) as "*preposterous*". In that connection, he was challenged on what he described as his "*concession*", and he rejected the premise that he had said he had "*seen no evidence*" of unlawful conduct, emphasising the *prima facie* concession he said he had made to the Leveson Inquiry.

A2.142. The parties' closing submissions take sharply divergent positions on the "*Leveson lies*" issue.

(1) The Claimants do not advance a discrete, tightly-pinpointed case in their written closing submissions identifying, passage by passage, which parts of Mr Dacre's Leveson evidence are said to have been lies. Rather, their closing submissions emphasise (i) what they characterise as a "*closed ranks*" approach by Associated's witnesses and repeated (said to be "*scripted*") formulations (including the refrain that enquiry agents were "*only for phone numbers and addresses*"), said to be contradicted by the surviving documents; and (ii) the significance of the late-disclosed "*Pandora's box*" material, including ledgers generated in June 2011 – before the announcement of the Leveson Inquiry – which, they submit, demonstrates that some internal investigative exercise into private investigators had been undertaken and yet witnesses were unwilling or

unable to explain who commissioned it or why. The Claimants rely on those matters as part of their broader submission that the Court should be slow to accept senior "*assurances*" (including those given publicly and under oath) where, they contend, the documentary record points the other way.

(2) Associated submits that the pleaded "*Leveson Lies*" allegation was a "*centre-piece*" of the pleaded deliberate concealment case, but that the Claimants "*showed no real appetite*" to pursue it at trial in the manner pleaded. In particular, Associated emphasises that "*the central allegation*" – that Mr Dacre (together with Mr Wright and Ms Hartley) lied when denying phone-hacking at Leveson – "*was never put*" to them, and that what was left consisted only of "*isolated words*" relating to the Operation Motorman data (in the Leveson evidence of Mr Dacre and Ms Hartley) being alleged "*without justification*" to have been mendacious; and, it submits, those words were shortly followed by Associated's concession to the Inquiry and therefore have "*no legal significance*" to the Claimants' deliberate concealment case. Associated accordingly submits that the "*core allegation*" of lying about phone-hacking was "*abandoned*" at the trial.

A2.143. In light of the way the issue was presented in closing submissions and the way the cross-examination was conducted, no properly focused case was advanced requiring me to determine whether Mr Dacre deliberately lied to the Leveson Inquiry in the wide terms suggested by the pleaded label "*Leveson Lies*". The questions which were explored in evidence were, rather, whether aspects of the evidence given at Leveson were inaccurate, incomplete, or expressed with a degree of certainty that was not warranted by the inquiries made and the material then available; and, if so, whether any such matter could properly be characterised as misleading and was relevant to any issue the Court must determine in these proceedings.

A2.144. Overall, I accept Mr Dacre's evidence as truthful. My conclusions on the pleaded "*Leveson Lies*" allegation, including the allegation against Mr Dacre, are set out in the main judgment (see Section G(4) [1574]-[1604], and specifically [1584]-[1588]).

(17) Elizabeth Hartley
(11 February 2026)

A2.145. Elizabeth Hartley is a solicitor and Group Editorial Legal Director of DMG Media (a division of DMGT). She joined Associated's legal department in January 2009, became Head of Editorial Legal Services in 2010, and later Group Editorial Legal Director; she describes her earlier practice (including as a solicitor at Reynolds Porter Chamberlain, latterly RPC) and longstanding involvement advising Associated on media litigation. She is a highly experienced media lawyer.

A2.146. In her evidence, Ms Hartley explains her role as an in-house editorial lawyer providing pre- and post-publication legal advice across a range of topics (libel, privacy, data protection, contempt, confidence, reporting restrictions, copyright and IPSO Code issues), and gives evidence about systems designed to maintain confidentiality of pre-publication information between titles. She describes the organisation and growth of the editorial legal department, pre-publication review practices (including attending news conferences and reviewing copy), and the department's approach to sources and payments (including routine questions about whether sources were paid).

A2.147. Ms Hartley commissioned an "*Internal Review*", in July 2011, at the request of Paul Dacre (and on her understanding that it was commissioned by the DMGT board), its scope (governance/controls to prevent illegal or unethical obtaining of private/confidential information), and her role in organising the work and drafting the report. She explains the overlap between the Internal Review work and the Leveson Inquiry s.21 notices, including the compressed timeline and the use of external lawyers and counsel to assist.

A2.148. She explains the enquiries into potential phone hacking at Associated during the Internal Review period, describing her understanding of denials by journalists and the rationale for "*follow the money*" checks (payments to external contributors) to investigate whether hacking might have occurred.

A2.149. Ms Hartley gave a number of statements to the Leveson Inquiry (including a statement, dated 25 October 2011, and a supplemental statement, dated 6 January 2012) and gave oral evidence to the Inquiry on 11 January 2012. One paragraph in Ms Hartley's Leveson witness statement has been a particular focus during the trial. In her Leveson witness statement, dated 25 October 2011, Ms Hartley summarised what was then known about Mr Whittamore's activities. The relevant paragraph of the witness statement is set out in the main judgment (see [1589]).

A2.150. In her first trial witness statement, Ms Hartley addressed this paragraph from her Leveson witness statement. She explained that, reading it now "*in isolation*" from earlier observations in her statement, she could appreciate that the wording was "*slightly bold*", but she said it was "*honestly stated*" based on the information she was aware of at the time. She added that, strictly, it would have been more accurate to say that, at the time, she was not satisfied on the evidence she had seen that Associated journalists had commissioned unlawful searches for information.

A2.151. In cross-examination, the Claimants put the Leveson "*we have seen no evidence…*" passage not merely as "*bold*" but as a statement which Ms Hartley either knew was untrue at the time or which was, at the least, highly misleading when read against information said to have been available to her during the Internal Review/Leveson process. She rejected the allegation that she knew it was untrue, and resisted the characterisation of deliberate misleading, maintaining that she could only speak to her state of knowledge and understanding when she signed the Leveson statement and gave oral evidence, and explaining that (with hindsight) she would not now stand by the paragraph in that form.

A2.152. A particular focus in the cross-examination was whether the "*we have seen no evidence…*" formulation was (as the Claimants put it) deliberately expressed so as to avoid acknowledging evidence said to show that certain categories of search (notably vehicle and criminal record checks) would have been understood as unlawful by journalists requesting them. The Claimants relied in that connection on the Field aide-memoire material and on the use made of it in the Internal Review narrative. Ms Hartley rejected the suggestion of deliberate limitation or concealment ("*absolutely not*"), while accepting that she regretted the inclusion of the paragraph and that, had she had time to analyse the material as fully as during the litigation, it would not have been expressed in that way.

A2.153. The Claimants also suggested that it would have been "*unhelpful*" to Associated to disclose the more incriminating aspects said to emerge from the Field material. Ms Hartley rejected any suggestion that she would have suppressed material, stating: "*I cannot conceive of any reason why I would withhold something from the board, and I never have*", and denying that anyone "*from Paul Dacre down*" expected her to mislead the board or others.

A2.154. In the same section of cross-examination, she was also challenged on the scope of what was said to Leveson about the use of private investigators/enquiry agents and the extent to which responses (including provision of ledgers rather than invoices) reflected the compressed timetable and limits of what she was asked to provide. She maintained that she did what she could on the material and instructions then available and that criticisms of adequacy were not the same thing as deliberate falsehood.

A2.155. Ms Hartley was not a witness of fact in relation to any of the pleaded instances of UIG relied upon by the Claimants. The Claimants have suggested that the relevance of her evidence arises, rather, from her role in (i) the preparation of material in 2011 for the Internal Review and for Associated's response to the Leveson Inquiry, and (ii) the evidence she gave (in writing and orally) to the Leveson Inquiry, which the Claimants allege to have been deliberately false or materially misleading and which they rely upon, in part, in support of their case on deliberate concealment to resist Associated's limitation defence.

A2.156. During the trial, on 13 February 2026, following the evidence of Mr Dacre and Ms Hartley, I required the Claimants to file a note identifying (i) the factual findings they would invite the Court to make about the evidence of those witnesses, and (ii) the issues (and in particular the issues identified in the trial matrices) to which each proposed finding was said to relate. I explained that the purpose of the note was to obtain clarity as to relevance and to ensure that cross-examination of subsequent witnesses remained focused on matters requiring determination, given the pressures on the trial timetable.

A2.157. The Claimants' note, dated 16 February 2026, identified the relevance of Ms Hartley's evidence primarily by reference to limitation/deliberate concealment and (more generally) aggravated damages. So far as Ms Hartley was concerned, the Claimants identified the principal findings they would invite the Court to make as including: (a) that her Leveson evidence concerning Steve Whittamore (and Associated's knowledge of illegality) was deliberately misleading (and, they contend, knowingly false); (b) that, when drafting her Internal Review, Ms Hartley had seen and relied upon an aide-memoire dated 18 October 2011 recording information Paul Field provided to Eddie Young (recording, amongst other matters, requests for ex-directory numbers, friends and family information and mobile phone conversions) ("the Field aide-memoire"); and (c) that certain payment ledgers (including those generated in June 2011) were not disclosed to the Leveson Inquiry, which the Claimants contend supports their deliberate concealment case (subject to their stated intention to reassess after further evidence from managing editors).

A2.158. Associated's responsive note, dated 19 February 2026, disputed the relevance of much of the Claimants' approach. It emphasised that the pleaded "*Leveson Lies*" case was confined to specific alleged lies pleaded in the Reply, and contended that (as shown

by the Schedule appended to the response) most of the pleaded "*lies*" had not been put to Ms Hartley (or Mr Dacre) in cross-examination. Associated accepted that the pleaded Whittamore paragraph relied upon by the Claimants against Ms Hartley raised a pleaded issue requiring determination, but disputed that a broader case based on the adequacy of investigations, or on "*materially misleading omissions*" more generally, was pleaded or capable of supporting a finding of deliberate concealment.

A2.159. The relevance dispute reflected in the mid-trial notes was carried forward into closing submissions. In their written closing submissions, the Claimants maintained that (together with the evidence of Mr Dacre and Mr Wright) Ms Hartley's evidence bears upon deliberate concealment and constructive knowledge, and they maintained their case that the Leveson "*we have seen no evidence…*" paragraph should be found to have been materially misleading (and, as they contend, knowingly false) in light of information said to have been available through the Internal Review process, including the Field aide-memoire material and issues said to arise from what was (and was not) disclosed to the Leveson Inquiry.

A2.160. Associated's closing submissions, by contrast, contend that the Claimants' pleaded "*Leveson Lies*" case was not pursued as pleaded and criticise the cross-examination as insufficiently focused on the pleaded allegations, including a failure squarely to put the "*central allegation*" (as Associated characterises it) that senior witnesses lied to Leveson about phone-hacking. More specifically as to Ms Hartley, Associated accepts that the pleaded Whittamore paragraph (the "*we have seen no evidence…*" paragraph) raises a pleaded issue requiring determination, but submits that much of the questioning in fact amounted to criticisms of the adequacy of investigation or omissions more generally rather than a properly put allegation of a lie in the strict sense of knowledge of falsity at the time.

A2.161. Associated also maintains in closing submissions that, properly analysed, the alleged "*Leveson Lies*" are not capable of supporting concealment within s.32(1)(b), because they did not conceal any fact without which any Claimant's cause of action would be incomplete; and, in relation to the Field material, Associated submits that Ms Hartley was aware of the substance of what Mr Field had said, whether by reference to a shorter note or otherwise.

A2.162. My assessment of Ms Hartley is that she was a careful and conscientious witness. She was careful to answer questions by reference to what she actually recalled, and said clearly when she had no recollection. She was also careful to distinguish between what she remembered and what she was having to infer from later-retrieved materials. In relation to her evidence to the Leveson Inquiry, she accepted, candidly, that what is now apparent from the documents and evidence available in these proceedings meant that the "*We have seen no evidence…*" formulation was not one she could stand by now, and she expressed clear regret about its inclusion: she said that she was "*not happy with that paragraph*" and "*wish[ed] it hadn't been included*", adding that if she had had time to go through everything in the way she has during this litigation "*it would not have been in that way*". Nevertheless, she rejected the suggestion that the paragraph had been framed so as deliberately to conceal what was known at the time, answering "*absolutely not*" and explaining: "*If I'd understood the position as I do now, we wouldn't have said that*".

A2.163. She also explained the context in which the wording came to be used, including the time pressure under which the Internal Review/Leveson materials were prepared ("*given the time pressure we were under*"), and her reliance on assistance from others (including external solicitors, RPC) while accepting that she did not herself do the detailed analysis at the time ("*My statement is very clear what I did and didn't do … You can criticise what I did or didn't do, but I can only say what I did and my reasons for it*"). When it was suggested that disclosure of material from the Field aide-memoire would have been "*unhelpful*" for Associated, she rejected any suggestion that she would have suppressed such material, stating: "*I cannot conceive of any reason why I would withhold something from the board, and I never have*," and further that there was "*absolutely no question of anybody, from Paul Dacre down, expecting me to mislead the board*". More generally, in describing the difficulties encountered at the time in dealing with the ICO material, she referred to the information as a "*moving target*" and said it was "*extremely difficult … to deal with … in such a short space of time*".

A2.164. Overall, I accept Ms Hartley's evidence as truthful. My conclusions on the pleaded "*Leveson Lies*" allegation, including the allegation concerning the "*We have seen no evidence…*" paragraph in her Leveson witness statement, are set out in the main judgment (see Section G(4) [1574]-[1604], and specifically [1589]-[1594]).

(18) James Heath
(16 February 2026)

A2.165. James Heath is a Partner and Director of the solicitors' firm, Thomson Heath Jenkins & Associates. He is a solicitor advocate, called to the bar, originally in July 2004, before cross-qualifying and being admitted as a solicitor in February 2009. He has spent his career working in private practice for specialist media litigation firms since that date. He joined Atkins Thomson, in December 2014, and has worked there ever since (although during that time the firm has changed names). He became a director of the firm, a limited company, on 27 March 2019.

A2.166. Mr Heath was not originally among the Claimants' witnesses. He was called by the Claimants following Dr Harris's evidence in which Dr Harris suggested that Mr Heath was the person at Atkins Thomson to whom certain "*co-ordinating*" references in the contemporaneous correspondence related. Mr Heath's evidence was therefore directed principally to (i) the contemporaneous emails relied upon by Associated in support of the pleaded "*limitation camouflage*" case in Sir Simon Hughes's claim (including the important email of 11 July 2019 – see main judgment [1541]), and (ii) a broader body of contemporaneous material in which Dr Harris and Mr Johnson described Mr Heath as having (or being intended to have) a role in organising or progressing potential claims against Associated.

A2.167. In his witness statement and in his oral evidence, Mr Heath maintained, in substance, that the "*co-ordinating*" suggestion was inaccurate. He had no instructions or retainer to develop claims against Associated, and he was not co-ordinating any such claims. He accepted that he had expressed (as a concept) an interest in acting for individuals with viable claims against Associated and that early claims would need to be sufficiently strong and brought as part of a coordinated group, but he said those discussions did not result in instructions and he never in fact coordinated any such group. He also denied that he had given (or would have given) advice of any scheme

to use Byline publication to "*deter*" a limitation defence, which he regarded as improper.

A2.168. In cross-examination, Mr Heath was taken to a series of contemporaneous documents which, on their face, described him as being involved in the development and/or coordination of intended claims against Associated. These included: (i) the email of 16 March 2016 in which Dr Harris proposed that Mr Noakes authorise Mr Heath to show his News Group claim to Dr Harris and Mr Johnson and asked that Mr Noakes "*ask James*" to obtain and provide material from MPS disclosure (including a "*missing sheet … with MoS on it*") for the purpose of the *Mail* claim investigation, to be shown to Mr Mulcaire for interpretation/statement; together with Mr Noakes' reply indicating (in numbered form) "*Done*" in response to those proposed action points; (ii) the Operation Bluebird memorandum (1 December 2016) which stated that in November 2016 "*Two have instructed solicitors Atkins Thomson, namely Heather Mills and her associate Ben Noakes*"; and (iii) the March 2017 press strategy memo which recorded that a Byline story concerning alleged unlawful activity at Associated had been "*legalled independently*" by media lawyers including Mr Heath.

A2.169. Mr Heath was also taken to material bearing directly on the limitation issues. First, an email of 5 August 2018 from Dr Harris forwarding "*Greg Miskiw emails to Chris Anderson – MoS*" to others and copying Mr Heath; and Mr Johnson's reply, also copying Mr Heath, commenting on those emails (including an assertion that one was a partial transcript of a voicemail transcript). Second, the email of 3 March 2019 from Dr Harris to Sir Simon Hughes (copied to Mr Thomson and Mr Heath) which stated, in terms, that "*James Heath is aiming to co-ordinate early wave claimants*" and explained (amongst other things) the "*safety in numbers*" rationale for resisting a potential strike-out application and seeking disclosure. Third, the email of 11 July 2019 to Sir Simon Hughes, on which Associated relies for its limitation camouflage allegation, stating that "*To deter the Mail from arguing 'limitation' (ie you knew about this 6 years ago) Atkins Thomson think it best for stories to be written in Byline which can be referred as the basis for claims being raised*".

A2.170. Mr Heath's responses to this material were, in summary, to maintain that he was not instructed to develop claims against Associated and was not in fact coordinating any group of claimants. He frequently drew a distinction between informal or general discussions and "*instructions*"/a retainer to act, and he said that he had no clients with viable claims to coordinate. In relation to the 3 March 2019 email, copied to him, he maintained that he treated it as "*nothing to do with*" him because it related to a client of Mr Thomson and he was not involved in Sir Simon's matters. He denied giving advice that would support any improper scheme, though he accepted that he had discussed (in general terms) how "*actual knowledge*" may be triggered for limitation purposes, including by publication and/or provision of documents.

A2.171. Mr Heath gave his evidence carefully and with precision. I accept that Mr Heath's evidence was honest and sincere. However, several features of his evidence caused me to treat it with caution on the limitation issues. First, his answers were repeatedly framed by reference to the absence of "*instructions*" or a formal retainer, and (at times) by an asserted lack of recollection, in circumstances where the contemporaneous correspondence repeatedly placed him within the chain of events as the intended conduit for steps to be taken (or described as taken) in relation to potential claims against Associated (for example, the 16 March 2016 action points and response;

the Operation Bluebird reference to claimants instructing his firm; and the description of him as having legal-reviewed relevant Byline material). Secondly, and more directly relevant to limitation, he was copied into the August 2018 forwarding of the Miskiw/Anderson emails and the March 2019 email describing him as "*aiming to co-ordinate early wave claimants*", yet his evidence did not provide a satisfactory explanation reconciling his stance that those matters were "*nothing to do with*" him with the terms and context of the emails themselves.

A2.172. In those circumstances, while I accept that Mr Heath may have used "*instructions*" in a particular and careful sense, his evidence did not (in my judgment) provide a full or satisfactory account of his role in the relevant period. Where his evidence is difficult to reconcile with the contemporaneous documentary record, I place greater weight on what the documents show when assessing the limitation issues. This caution about the completeness of Mr Heath's account does not mean that I find that he gave the advice in the terms recorded in Dr Harris' email of 11 July 2019, or that he was party to any limitation camouflage scheme. I address those issues in the main judgment.

(19) Stephen Wright
(17 February 2026)

A2.173. Stephen Wright is a journalist and former Associate Editor (Investigations) at the *Daily Mail*. He made a first witness statement in October 2025 and a second witness statement in November 2025.

A2.174. His evidence was directed principally to the sourcing and publication of the Articles pleaded in Baroness Lawrence's claim, including his account of confidential sources, police press office confirmation and his dealings with intermediaries and external agencies. The detail of his evidence, so far as relevant to the specific Articles in issue, is considered in the main judgment.

A2.175. In his witness statements, Mr Wright gives a narrative account of his professional background and long-running reporting on crime and corruption. He explains that where he used cash, it was often to protect source identity and to pay freelancers or sources, and he denies paying serving police officers for information. He also addresses allegations concerning external agencies and intermediaries, including ELI/TDI and John Ross, and denies any corrupt or unlawful use of them.

A2.176. The Claimants submit that Mr Wright was a key witness whose credibility and alleged "*propensity*" to commission UIG are central. They contend that he was evasive and combative in cross-examination, displayed a selective approach to memory, and gave unconvincing explanations for cash payments, "*special contact*" entries and his relationship with John Ross. They further rely on documentary and payment material, and on the inclusion of private detail in certain articles, as supporting an inference that he commissioned UIG, including by use of intermediaries.

A2.177. Associated submits that the allegations of corrupt payments, including via John Ross, were put without proper evidential foundation and should be rejected. It relies on Mr Wright's evidence that his information was obtained through confidential but legitimate sources and/or conventional police press office engagement, and submits that the Court should adopt an article-specific approach rather than drawing impermissible inferences from generalised patterns or non-specific material.

A2.178. Before turning to my assessment of Mr Wright's oral evidence, I note the evidence of Ms Hartley as to the effect of these proceedings on him. In her evidence she described Mr Wright as having been "*devastated*" by the allegations made against him and explained that, as a result, he decided that he could no longer continue to work full time. She also confirmed that Associated had continued to pay him for trial-related work and had provided security arrangements. That evidence provides context for aspects of his presentation as a witness, but it was not put to Mr Wright that any such arrangements affected the substance of his evidence, and no such case was advanced in closing submissions.

A2.179. In cross-examination, there were occasions when exchanges became heated and Mr Wright responded combatively to suggestions of criminality and corruption, sometimes with inappropriate asides. He required a warning from the Court to confine himself to answering the questions asked. I also accept that his manner in the witness box was at times argumentative.

A2.180. Mr Wright was cross-examined about his investigation in connection with two articles, published on 14 and 16 May 2005, which reported developments in the investigation into the stabbing of Abigail Witchalls. Richard Cazaly was a suspect in that investigation. In particular, Mr Wright was asked about his use of ELI in relation to inquiries concerning members of the Cazaly family. On the way the case was ultimately advanced at trial, that was propensity material. It was not put as an allegation that Mr Wright had used ELI in relation to any of the specific Articles complained of in Baroness Lawrence's claim. I therefore do not treat that evidence as relevant to the issues I have to decide in relation to those Articles.

A2.181. On the substance of the pleaded issues, Mr Wright's evidence on the sourcing of particular articles was, in the main, given in a straightforward manner. He did not seek to speculate beyond his knowledge and, where he could not recall the detail of events from many years ago, he was candid about the limits of his recollection.

A2.182. I accept Mr Wright's evidence that he has not made corrupt payments to serving police officers, whether in relation to the specific incidents alleged or generally. The article-specific findings are set out in the main judgment.

A2.183. Overall, I found Mr Wright to be a truthful but, at times, argumentative witness. His evident indignation at the allegations made against him adversely affected the manner in which he sometimes answered questions. Nevertheless, where his evidence concerned the sourcing of the Articles and his professional practices, he generally gave a coherent account and did not overreach by speculation. I have therefore treated him as an honest witness, while bearing in mind his occasional tendency to become combative when he felt personally affronted by allegations of wrongdoing.

(20) Richard Pendlebury
(19 February 2026)

A2.184. Richard Pendlebury is a journalist and Senior Feature Writer at the *Daily Mail*.

A2.185. His evidence was directed to one pleaded article on which he was co-bylined with Stephen John Wright (Article (29)), and to explaining, given the passage of time, how he and Mr Wright generally worked together on long-form crime pieces.

A2.186. My assessment of Mr Pendlebury is that he was a straightforward witness who gave truthful evidence to the best of his recollection. He was careful to distinguish between what he could say from actual memory and what he was inferring from long experience of working with Mr Wright on crime features. In cross-examination, he repeatedly declined to go beyond what he could properly say, describing several propositions that were put to him as "*speculation*" and emphasising that he simply could not remember the events of 20 years ago. He readily accepted the limits of his evidence. He did not recall the specific Article; he could not identify the time, place, form, or duration of any "*off the record*" briefing; and, importantly, he accepted that key passages in the Article (which he said he would have written) would have been based on information provided to him by Mr Wright rather than on any independent knowledge of his own. He was also clear and consistent that he had never heard of ELI/TDI (or the individuals said to run them) until these proceedings, and that he had no awareness at the time of Mr Wright commissioning such services.

A2.187. The Claimants did not put to Mr Pendlebury that he was lying or deliberately misleading the Court; rather, the cross-examination focused on the limited assistance he could give given the passage of time and his lack of direct knowledge of any commissioning. I therefore accept his evidence as honest and reliable so far as it goes, while recognising that its probative value is necessarily confined: it provides some support for the general features-writing workflow he described, but it cannot resolve disputed questions about the provenance of the particular "*exclusive*" details in the Article or the means by which Mr Wright obtained them.

(21) David Wood
(19 February 2026)

A2.188. David Wood is a retired Metropolitan Police Service officer who rose to Deputy Assistant Commissioner, with specialist experience in anti-corruption and intelligence operations, and subsequent senior public service roles.

A2.189. His evidence was directed to the anti-corruption operational context in which Southern Investigations, Jonathan Rees and Sid Fillery came under scrutiny, and to whether contemporaneous intelligence implicated the *Mail* titles or their journalists in the way alleged by the Claimants. The substance of his evidence, insofar as relevant to the allegation that Stephen Wright used John Ross as a conduit for corrupt payments to police officers, is considered in the main judgment in relation to Article (21).

A2.190. In summary, Mr Wood's position was that, although the investigations established that Rees and Fillery worked for some newspapers, he did not recall the *Mail* titles being mentioned or implicated, and he did not receive contemporaneous reports from Mr Haslam, or otherwise, alleging that Southern Investigations was doing work for Associated or that Baroness Lawrence had been placed under surveillance. He further stated that his later opportunity to review contemporaneous contact sheets fortified that absence of recollection.

A2.191. The Claimants submitted that Mr Wood's evidence did not undermine Mr Haslam's account. They relied on his acceptance, in cross-examination, that absence of recollection did not permit him to say there had "*never*" been any mention, and on the fact that he was not Mr Haslam's handler throughout the entire period.

A2.192. Associated relied on Mr Wood's evidence as contradicting and undermining Mr Haslam's assertion that the relevant allegations had been reported to Metropolitan Police handlers, and as showing that there was no contemporaneous intelligence known to Mr Wood implicating the *Mail* titles or their journalists in the way alleged.

A2.193. My assessment of Mr Wood is that he was a straightforward and honest witness who did his best to assist the Court, while recognising the limits of his recollection of events from the late 1990s. His evidence was careful and appropriately qualified. He readily accepted where his memory might be imperfect and fairly acknowledged that lack of recollection did not entail that there had "*never*" been any mention of a matter.

A2.194. I accept Mr Wood's evidence as truthful so far as it goes. However, its probative value is necessarily limited. It is primarily evidence of non-recollection (fortified, on his account, by his later opportunity to inspect contemporaneous contact sheets), rather than evidence derived from contemporaneous records. It therefore does not, by itself, determine what Mr Haslam did or did not report at the time, but it is relevant to the assessment of whether allegations of the kind advanced by the Claimants were likely to have been reported up the chain in the way alleged.

(22) Paul Henderson
(19 February 2026)

A2.195. Paul Henderson is a journalist, who worked at the *Daily Mail* (1989–1996) and then at the *Mail on Sunday* (1997–2005), as Investigations Editor and briefly News Editor. He made a witness statement on behalf of Associated addressing allegations that he commissioned, used, or interacted with a number of third parties said to have carried out UIG, including (centrally) Gavin Burrows.

A2.196. The importance of Mr Henderson's evidence is hard to understate in the context of an assessment of Mr Burrows' credibility because in the account given in Mr Burrows' purported statement of 16 August 2021, Mr Henderson was the only person at Associated with whom Mr Burrows had a connection and the single person who was alleged to have instructed Mr Burrows in his unlawful evidence gathering and to have used the fruits of it.

A2.197. More generally, in his witness statement, Mr Henderson addresses (among other matters) his use of Daniel Hanks for obtaining contact details in the US; denies commissioning Glenn Mulcaire or being offered a "*menu*" of illegal services; says he does not remember using Steve Whittamore/JJ Services (though accepts it is possible he used search agents for numbers/addresses); and denies commissioning Southern Investigations/Jonathan Rees.

A2.198. In relation to Gavin Burrows, Mr Henderson says he recalls travelling to Mallorca to check a story that he said did not lead anywhere. He remembers meeting a man there, but cannot now say whether it was Mr Burrows (and does not recognise the photograph he was shown). He denies commissioning Mr Burrows to undertake unlawful acts, and denies the pleaded narrative of an ongoing relationship and repeated unlawful tasking.

A2.199. Associated submits, rightly, that Mr Henderson was a critical witness on the Burrows allegations. It submits that he refuted the Claimants' case completely, that his denials

were not undermined in cross-examination, and that the contrast between his evidence and Mr Burrows' disavowed and inconsistent accounts is stark. Associated further submits that the Claimants did not squarely put key parts of their Burrows case to Mr Henderson, and that, in any event, the proposition that he commissioned serious criminality (including landline tapping) to feed information into rival titles is inherently implausible.

A2.200. In assessing the evidence of Mr Henderson it is necessary to keep firmly in mind (i) the centrality attributed to him in the pleaded "*Burrows*" narrative and in the accounts relied upon by the Claimants – most notably, Mr Burrows' alleged description of Mr Henderson as his principal (indeed "*main*") contact at the *Mail on Sunday* and the person said to have commissioned the alleged unlawful activity and to have received its product; (ii) the striking absence of any contemporaneous documentary material evidencing an ongoing commissioning relationship between Mr Henderson and Mr Burrows (still less any record of payments or instructions), such that the case against Mr Henderson necessarily depended very substantially on the admissibility and reliability of the hearsay accounts attributed to Mr Burrows; and (iii) the way in which the case was explored in cross-examination.

A2.201. Mr Henderson gave clear and emphatic denials of commissioning Mr Burrows to undertake unlawful acts (including landline tapping and voicemail interception), and rejected as "*lies*" the allegation that he acted as a conduit for such material. Associated submits that important elements of the pleaded "*Burrows*" case – both as to the alleged breadth of tasking and (in particular) as to article-specific mechanisms – were not put squarely to Mr Henderson.

A2.202. The Claimants' position, by contrast, is that Mr Burrows' detailed admissions (and the surrounding material on which they rely) provide a sufficient evidential foundation notwithstanding those criticisms of the cross-examination. I deal elsewhere with my assessment of Mr Burrows and the admissibility of the material relied upon to support the allegations against Mr Henderson.

A2.203. A striking feature of Mr Henderson's oral evidence was the consistent and credible way in which he placed his career and professional focus in serious investigative journalism, rather than celebrity or showbusiness reporting. In cross-examination he emphasised that his "*main body of work was serious investigations and foreign assignments*", giving examples of the kind of work he did, and stated that, for him, "*anything to do with celebrities was minimal*". The Claimants do not challenge this evidence. That point was relevant to the inherent plausibility of the pleaded Burrows narrative, which (on the Claimants' case) involves extensive, repeated and highly intrusive tasking directed at celebrity targets and the supply of such material into competing titles and formats.

A2.204. Mr Henderson's evidence about the Mallorca trip was, in my assessment, appropriately confined to what he could genuinely recall. In his witness statement he accepted that he remembered travelling to Mallorca to check a story which "*did not lead anywhere*", and that, having been reminded of it, he remembered meeting a man there, but could not now say whether that man was Mr Burrows. He did not recognise the photograph he was shown, and he did not remember what he asked the man to do or whether he was paid, though he denied asking him to do anything illegal. In oral evidence he similarly described meeting "*a man in Mallorca whose name I could not*

remember", and made clear that he did not know for sure whether that man was Mr Burrows. That evidence provides no support for the pleaded case of a sustained commissioning relationship.

A2.205. The second striking feature of this aspect of the case is the near-complete absence of documentary material linking Mr Henderson to the unlawful commissioning alleged. The Burrows allegations were advanced at a level of seriousness and asserted scale which, if true, could have been expected to leave some trace – whether in records of instruction, payment, or other contemporaneous material. But Associated's case (both at the interim stage and in its submissions) is that no such record exists and that disclosure searches identified no record of Mr Burrows (in any alias) working for Associated at all. That absence is not determinative by itself (records can be incomplete or missing), but in the present context it meant that the allegations against Mr Henderson depended heavily on the reliability of the accounts attributed to Mr Burrows and on what could properly be put and tested in the witness box.

A2.206. Against that evidential background, I found Mr Henderson to be a clear and convincing witness on the Burrows allegations. When the substance of the case was put to him – that he had commissioned Mr Burrows to carry out serious unlawful activity (including landline tapping and voicemail interception), and that he had used the product of that activity – he rejected it in emphatic terms, including characterising the allegations as fabricated and describing them as "*extreme and grotesque claims*" that "*never, ever happened*". He likewise rejected the suggestion that he acted as a conduit passing such material to colleagues (including showbusiness writers), describing that as "*an absolute lie*". I accept that evidence. In particular, I accept his evidence that, save for the possible brief Mallorca meeting, he had no material connection with Mr Burrows and did not commission him to undertake any unlawful acts.

A2.207. Given the evidential and procedural history of the "Burrows" allegations, I address elsewhere in this judgment the questions of admissibility and proof concerning the prior statements attributed to Mr Burrows (including the purported statement, dated 16 August 2021) and the conditions upon which such material could properly be deployed. However, in the present context those issues are, in large measure, academic. The pleaded "Burrows" allegations depended upon establishing that Mr Burrows was commissioned by Associated through Mr Henderson and that he acted as his conduit for the fruits of his UIG.

A2.208. I have accepted Mr Henderson's evidence that he did not commission Mr Burrows to undertake unlawful acts and did not have the ongoing relationship alleged. In the absence of any contemporaneous documentary material evidencing such commissioning (or any record of payment or instruction consistent with the scale alleged), my acceptance of Mr Henderson's evidence effectively compels the rejection of the Burrows allegations against Associated, whether or not the prior Burrows' statements, relied upon by the Claimants, were to be treated as admissible. That conclusion is fortified by Mr Burrows' own disavowal, in his oral evidence at trial, of the prior admissions and of the contention that he worked for Associated at all. I nonetheless deal with the admissibility/authenticity issues elsewhere because of their procedural importance and because the parties devoted substantial submissions to them.

(23) Nicholas Craven
(23 February 2026)

A2.209. Nicholas Craven is a journalist employed by Associated, currently working for *MailOnline*. He is a career journalist. In 1996, he secured a staff position at the *Daily Mail* and stayed there for 10 years, ultimately becoming a Senior Reporter and Features Writer. In 2006, he began freelancing for the *Mail on Sunday*, and also occasionally for the *Daily Mail*. He was never on staff while freelancing for the *Mail on Sunday* but worked for the paper five days a week regularly from about 2012 to 2020.

A2.210. Mr Craven's evidence was directed to the sourcing of a pleaded *Daily Mail* article, dated 14 May 2005 (co-bylined with Stephen Wright), concerning Abigail Witchalls ("*The missing hours of the loner linked with attack on Abigail*"). The pleaded allegation is that the reference in that article to "*extensive conversations*" reflected access to private call information (including itemised phone billing data) said to have been obtained through UIG by a third party.

A2.211. In his witness statement, Mr Craven explained that he had no present recollection of writing the article given the passage of time. He did not claim to be able to reconstruct the sourcing in detail, but he denied commissioning any private investigator or enquiry agent to obtain private telephone information. He said that he had no knowledge of, and no dealings with, the entities the Claimants suggested as having supplied unlawful phone data.

A2.212. In cross-examination, Mr Craven was taken to a series of invoices and work records showing that, on 12 May 2005, repeated commissions were made to ELI by Mr Wright and Ms Tahira Yaqoob in relation to members of the Cazaly family (including references to "*J Cazaly*", "*R Cazaly*", and "*Cazaly*"). In cross-examination, Mr Craven was taken to a series of invoices and work records showing that, on 12 May 2005, repeated commissions were made to ELI by Mr Wright and another journalist, Tahira Yaqoob, in relation to members of the Cazaly family. He was asked directly whether he was aware that Mr Wright and Ms Yaqoob were commissioning ELI in relation to the story. Mr Craven's evidence was that he was not: he had never heard of ELI, and the first time he became aware of it was when reading about it in the context of this case. Speaking generally, he said that, at the time, he would use Friends Reunited as a valuable tool for tracking down individuals.

A2.213. Mr Craven was also questioned about the extent to which he would have noticed the use of private telephone data. He explained that he would have remembered being shown call data in the form of a telephone bill (or equivalent), and that he did not recall ever receiving or being shown such material. When asked whether he knew at the time what private investigators could do, he said that he did not think he did, and that it was difficult now to say what knowledge he had twenty years ago. He was also asked about a different third party, Mr Stafford, and said that he understood him to be a freelance journalist who was good at obtaining numbers (including, sometimes, ex-directory or mobile numbers), but he denied knowing of (or using) him for call lists.

A2.214. As to the specific passage in the Article about "*extensive conversations*", Mr Craven accepted that, as the writer of the article, he would have written that wording, but he

had no recollection of where the information came from. Pressed as to whether it was his information or Mr Wright's, he did not claim actual memory and described his answer as an assumption. He surmised it likely came via Mr Wright from the police, given Mr Wright's role as a crime reporter, but he made clear he could not remember. He rejected the proposition that such information would necessarily have been attributed in the copy to a police source, explaining that it might not be "*on the record*" from a press office but could have been guidance from a detective contact. He was also asked what material in the Article could have come from ELI: he could not assist beyond stating that no material came to him directly from ELI because he did not know of its existence.

A2.215. My assessment of Mr Craven is that he was a straightforward witness who did his best to assist the Court, while recognising the limits of his recollection of events from 2005. He was candid that he did not remember writing the article or how particular details came to be included, and he was careful to identify when he was making no more than an assumption (for example, when he suggested – expressly as speculation – that the "*extensive conversations*" detail likely came via Mr Wright from the police). At the same time, he was clear and consistent about matters he said would have stood out: in particular, he said that he would have remembered being shown call data in the form of a telephone bill, and he did not recall ever receiving or being shown such material. He was also unequivocal that he had never heard of ELI at the relevant time, and that no material came to him directly from ELI, because he did not know of its existence until the litigation. Mr Craven's evidence is of narrow compass, and bearing in mind the nature and limits of the allegations put to him, I accept Mr Craven's evidence as truthful (so far as it goes).

(24) Julian Darrall
(23 February 2026)

A2.216. Julian Darrall was a senior employee of Associated, being Group Legal Adviser and then Deputy Head of Editorial Legal Services between 2010 and 2020. He is a solicitor and is currently a media lawyer at Bristows LLP. His evidence was provided in two witness statements, dated 17 October 2025 and 4 December 2025.

A2.217. Mr Darrall's evidence was directed principally to corporate and compliance matters bearing on the issues in the proceedings: Associated's engagement with information-rights and regulatory issues; the approach taken within Associated to the use of enquiry agents/search agents (including the existence and seriousness of the ban introduced prior to his joining); and, in particular, the August 2011 visit to the offices of the ICO at Wilmslow in connection with material seized during Operation Motorman, and the subsequent handling of the data provided by the ICO.

A2.218. In cross-examination, the principal focus was on the Wilmslow visit and what Mr Darrall knew (or did not know) before and after it. He was asked whether the purpose of the visit was linked to the imminence of the Leveson Inquiry and the need to respond to section 21 notices concerning the use and payment of private investigators. Mr Darrall accepted that he was aware, at least generally, that senior executives would be giving evidence to the Leveson Inquiry, but he said he could not remember what he had been told at the time about the reasons for his trip, who precisely instructed him to go, or what specific "*brief*" (if any) he was given in advance. He repeatedly emphasised the limits of his recollection of events from 2011.

A2.219. Mr Darrall was also pressed on the fact that the delegation who travelled to Wilmslow included senior personnel (including John Wellington and Ted Verity) who, it was suggested, had themselves approved or been copied into TPI invoices. It was put to him that such individuals might have had an interest in "*undermining*" incriminating material. Mr Darrall did not accept that suggestion. He said (in substance) that the purpose of the visit, as he remembered it, was fact-finding: to see what the underlying material said; he did not see how "*looking at material*" could properly be "*undermined*" in the way suggested; and he stated that, based on his experience of Mr Wellington, such conduct would be out of character.

A2.220. A further line of questioning concerned Mr Darrall's description (in his evidence) of concerns about the reliability of the ICO's secondary material (spreadsheets/discs) when compared against a limited sample of original book pages. In cross-examination, he accepted that the contemporaneous note of the visit recorded that the word "*blag*" appeared in the books and that searches were undertaken for that term. He explained that his own post-visit task (so far as he recalled) was confined to testing the consistency and reliability of the ICO's data (in particular by comparing "*blag*" search results across different versions/discs), rather than conducting any broader analysis of the categories of enquiry recorded in the spreadsheets. He said that he was not carrying out (and did not understand himself to be carrying out) the substantive investigation into what Associated journalists had asked for or what that might mean. That investigative work, on his account, was being led by Eddie Young and supported by external lawyers.

A2.221. Mr Darrall was asked about other matters said to show what Associated already knew (or, on the Claimants' case, should have known) about the nature of the material in advance of Wilmslow – most notably correspondence in 2010 said to allege unlawful procurement of information from Operation Motorman records, and a 2014 police contact concerning a historic article by Katie Nicholl (see [A2.517]). On each of those topics Mr Darrall said that he had either no recollection at all, or only a very vague recollection, and could not assist beyond what the documents showed; he did not accept invitations to speculate about what he "*must have*" known or what he "*must have*" thought at the time. The thrust of the cross-examination was therefore not that Mr Darrall himself had commissioned unlawful activity, but that his evidence (and the corporate response he described) showed a limited and/or insufficient engagement with the substance of what the ICO material revealed.

A2.222. My assessment of Mr Darrall is that he was a careful and truthful witness who appropriately recognised and respected the limits of his recollection and of his personal involvement. He did not seek to present himself as the person who conducted the substantive investigation into the ICO material, and he was clear about the comparatively narrow role he remembered performing (checking the reliability and consistency of the data across versions). He was not materially challenged as dishonest, and the cross-examination largely proceeded by inviting him to accept propositions about what he "*must have*" known or inferred from documents and surrounding circumstances. Where he had no proper recollection, he said so plainly; and where the contemporaneous note showed what had occurred (for example, that "*blag*" was identified and searched), he accepted it. In those circumstances, I accept Mr Darrall's evidence as truthful and reliable so far as it goes, while recognising that its scope is necessarily limited to the matters within his direct knowledge and

recollection and it has limited relevance to the issues that I must decide, having regard to the parameters of the litigation.

(25) Peter Wright
(23 February 2026)

A2.223. Peter Wright is the former Editor of the *Mail on Sunday* and is now Emeritus Editor at Associated. He provided a witness statement, dated 17 October 2025, and was cross-examined at trial.

A2.224. In summary, Mr Wright's evidence addressed (i) the editorial culture and standards at the *Mail on Sunday* during the relevant period; (ii) managerial controls and discipline within the newsroom; and (iii) issues arising from the allegations of third-party UIG, including (in particular) matters said to involve external private investigators and enquiry agents.

A2.225. The cross-examination proceeded on the basis that Mr Wright had been a "*hands-on*" editor with overall responsibility for the *Mail on Sunday*'s editorial output, newsroom discipline and (at least at a strategic level) budgetary control. He accepted that he held frequent news conferences, that he would suggest lines of enquiry and challenge stories where needed, and that (as he had said in evidence to the Leveson Inquiry) he would tend to know from his journalists the "*means*" by which a story was obtained, at least in contentious cases.

A2.226. A principal theme of the cross-examination was the timing and extent of Mr Wright's knowledge of inquiry agents/private investigators in the UK. It was put to him that, notwithstanding his claimed emphasis on expenditure control and his "*hands-on*" approach, it was implausible that he remained unaware until late 2003/early 2004 of extensive payments to third-party inquiry agents. Mr Wright maintained that he was not aware of such use until that period; he explained that the financial information he required and received was a bespoke list focused on direct editorial expenditure (payments to journalists and photographers), whereas many inquiry-agent payments fell into other accounting categories and were monitored operationally by the managing editor rather than being visible to him in the weekly lists he reviewed.

A2.227. Closely connected to that theme was a sustained challenge to his account of what he (and Associated) knew, and what was said, about the nature of Steve Whittamore's work when preparing evidence for the Leveson Inquiry. It was put to Mr Wright that (contrary to his Leveson evidence suggesting that invoices/records were "*very vague*") the underlying material included work lists and entries which, on their face, described categories of work such as "*friends and family*" searches, mobile conversions, vehicle registration checks and blags; and that he had (or should have had) access to information making this plain. Mr Wright resisted the allegation that he had knowingly misled the Inquiry. He accepted that, once the ICO material had been reviewed, there was at least a prima facie case that some categories of request were unlawful, and he said he had acknowledged that position in his Leveson oral evidence; but he maintained that he had not seen the detailed "*second sheet*" material in 2004, that he relied on the managing editor and legal team for investigation and disclosure work, and that his evidence reflected what he then understood and what he had personally seen.

A2.228. The cross-examination also examined what Mr Wright knew (or recalled) of specific items of correspondence and internal documents said to bear on knowledge prior to Leveson and the extent of third-party activity. In particular, he was taken to letters of complaint in 2010 (copied to him) referring to Operation Motorman and to an extract said to show the obtaining of (among other things) friends-and-family information and ex-directory numbers. Mr Wright said he did not recall seeing those letters at the time and explained that such correspondence would ordinarily have been handled by the legal department and/or managing editor.

A2.229. A further theme concerned US private investigators and what was (and was not) disclosed to the Leveson Inquiry. Mr Wright accepted that US-based journalists working for the *Mail on Sunday* had commissioned US investigators (including Daniel Hanks and the Capitol agency) and he did not dispute the existence of the invoices shown to him. However, he said he had not been responsible for compiling disclosure to the Leveson Inquiry and could not assist on why particular material was or was not included; and he maintained that he did not consider himself to have had direct involvement in that disclosure exercise.

A2.230. In cross-examination, Mr Wright was also asked about the pleaded allegations concerning Gavin Burrows. He maintained that he had had no knowledge of Mr Burrows during his time as editor and denied any commissioning of him (or knowledge of commissioning by *Mail on Sunday* journalists).

A2.231. Associated relies on Mr Wright's evidence as supporting a coherent account of newsroom professionalism, hierarchical control and editorial discipline, and submits that the more serious allegations of systematic criminality are not made out on the evidence. The Claimants submit that the Court should approach senior "*assurances*" with caution where the documentary record demonstrates substantial third-party expenditure and where, they contend, the contemporary material undermines the extent of management knowledge asserted.

A2.232. A pleaded issue concerning Mr Wright related to the Claimants' case on "*deliberate concealment*" through allegedly false denials given on oath to the Leveson Inquiry (the so-called "*Leveson Lies*"). So far as Mr Wright is concerned, the pleaded allegation is set out at Reply §10(e), which quotes his Leveson witness statement and pleads that it was a false denial. It relies on the following passage (emphasis added):

> "[Mr Dacre] the Editor in Chief banned all use of external search agencies in April 2007 with immediate effect. Since 2007 we have approved the use of two subscription tracing services… and The Mail on Sunday also uses a researcher to support The Mail on Sunday's two staff reporters based in the US. **As far as I am aware the rules we imposed have always been observed on *The Mail on Sunday***".

A2.233. The Claimants' pleaded case is that this denial (and other senior-executive denials) was "*false*", and false "*as they were well aware given the internal review investigations which they admitted were carried out into possible wrongdoing at their newspaper titles*". In their written closing submissions, the Claimants maintain that the Court should be slow to accept managerial assurances about compliance where, they submit, the surviving material shows significant third-party activity.

A2.234. In cross-examination, several lines of questioning were pursued designed to support the proposition that Mr Wright's Leveson evidence was misleading or incomplete (including propositions about what should have been disclosed to the Inquiry). Mr Wright's evidence was, in substance, that he was not responsible for the compilation of disclosure to the Inquiry, that he assumed relevant payments had been disclosed, and that he answered the questions he was asked to the best of his knowledge at the time.

A2.235. Associated, however, emphasises in closing submissions the distinction between (a) the *pleaded* "*Leveson lie*" against Mr Wright (Reply §10(e)), and (b) what was *actually put* to him at trial. Associated submits that the Court ruled that, in relation to Mr Wright, the only relevant pleaded "*Leveson Lie*" is Reply §10(e), and that the pleaded Leveson passage "*was not challenged*".

A2.236. Associated therefore submits that the "*Leveson Lies*" case must be confined to what is properly pleaded and properly put, and contends (again in closing submissions) that the Claimants failed squarely to put to the relevant witnesses which passages of their Leveson Inquiry evidence were said to be lies.

A2.237. My assessment of Mr Wright is that he was a careful and measured witness. He remained focused and clear in his answers, and he distinguished between what he could say from his own knowledge and what he could not. He made appropriate concessions where the point properly arose, but did not speculate beyond his recollection. In relation to the Leveson issue, he answered firmly and directly on the limits of his personal involvement in the disclosure exercise, while maintaining his account as to what he understood at the time and the basis on which he gave his evidence. Overall, I accept his evidence as truthful. My conclusions on the pleaded "*Leveson Lies*" allegation, including the allegation concerning the passage pleaded at Reply §10(e), are set out in the main judgment (see Section G(4) [1574]-[1604], and specifically [1595]-[1600]).

(26) Mark (Chris) Anderson
(24 February 2026)

A2.238. Mark Anderson (known professionally as "Chris" Anderson) is a journalist and former senior editor at the *Mail on Sunday*. He was Associate Editor for News and Sport from November 1999 to November 2008. He provided a witness statement, dated 17 October 2025, and emphasised, candidly, the limitations of his recollection given the passage of time.

A2.239. Mr Anderson's evidence was directed principally to the April/May 2006 email chain between him and Greg Miskiw (the "*Miskiw/Anderson emails*"). In his witness statement and oral evidence, he denied any knowing involvement in unlawful interception and denied that Mr Miskiw discussed Mr Mulcaire, or unlawful methods, with him. He said that it did not occur to him at the time that the information being supplied might have been unlawfully obtained or derived from voicemail interception, and explained that Mr Miskiw's reference to a "*source*" would, to him, have been entirely ordinary in journalistic terms. He accepted that the emails showed some engagement on his part with the proposed stories, including the responses "*Of course we are interested in Sadie*" and "*thanks greg – we're going to give her a knock*",

but denied that he appreciated at the time that the material was voicemail-derived or otherwise unlawfully obtained.

A2.240. The substance of Mr Miskiw's hearsay allegation – namely that Mr Anderson knew that Mr Miskiw was acting as a conduit for unlawfully obtained material, including material obtained by Mr Mulcaire – was squarely put to Mr Anderson in cross-examination and firmly denied. It is, however, material to note that the cross-examination did not descend to every detail of Mr Miskiw's affidavit or to each of the individual targets there identified. Mr Miskiw's affidavit therefore remained untested hearsay, albeit hearsay whose essential allegation against Mr Anderson was directly confronted in oral evidence.

A2.241. My assessment of Mr Anderson is that he was a truthful witness. He was at times discursive and could drift into argument with counsel. During his evidence, I had to remind him that his task was to answer questions rather than debate the case. Those features did not cause me to doubt his honesty. They reflected a witness who was plainly distressed by, and resistant to, serious allegations being put to him based on inferences drawn from documents and from untested hearsay.

A2.242. I accept that the contemporaneous emails show that Mr Anderson responded to, and to a degree engaged with, Mr Miskiw's approaches. The critical question, however, is whether in April 2006 Mr Anderson appreciated that the material in the emails was the product of voicemail interception by Mr Mulcaire. I find, without hesitation, that he did not. In my judgment, the criticism of Mr Anderson in this respect depends substantially on hindsight analysis – informed by what is now known of Mr Mulcaire's activities – rather than on a contemporaneous foundation for a finding of actual knowledge in 2006. On that issue, I have preferred the tested oral evidence of Mr Anderson to the untested hearsay evidence of Mr Miskiw. The detail of the Miskiw/Anderson emails, the later Johnson call, the parties' submissions and my reasons for rejecting the claims based on those emails are set out in the main judgment (see [964]-[1014]).

(27) John Wellington
(25 February 2026)

A2.243. John Wellington was the Managing Editor of the *Mail on Sunday* from 2000 until his retirement in 2020. He provided an amended witness statement, dated 17 October 2025 (amended 25 February 2026), and was cross-examined at trial. He emphasised that, given the passage of time, he could not now remember several matters clearly and sought to distinguish between matters within recollection and matters he could address only by reference to documents.

A2.244. Mr Wellington's evidence was directed principally to the operational and approval framework for third-party expenditure at the *Mail on Sunday*, including (i) the processes for approving reporters' expenses, contribution payments to freelance journalists and tipsters, and invoices (including inquiry agent/TPI invoices), and (ii) the extent to which those processes involved (or did not involve) scrutiny of the underlying work. He explained that he signed off very large volumes of invoices (including TPI invoices) and that, because of volume and time pressures, he could not study every invoice in detail. His primary concern was overall spend, raising questions with desk heads (or sometimes reporters) only where something prompted a query.

He also explained the distinction (as he then understood it) between contribution payments and invoice payments, and that he did not have a full appreciation at the time of the extent to which inquiry agent payments were treated in different accounting categories.

A2.245. In cross-examination, Mr Wellington was taken to several episodes said to illuminate what practical scrutiny was (or was not) applied to third-party payments and what, if anything, was understood at senior level about the provenance of information.

(1) First, he was questioned about work he undertook after the 2011 ICO/Wilmslow visit, including a bundle of papers described as his "*papers on Whittamore spreadsheet (blags)*". He accepted that the handwriting linking particular invoices/requests to published articles was his, and that he had been asked to try to match the ICO material to articles. He said he did not, however, speak to the journalists about their role in commissioning the relevant inquiries, and he did not see the internal review conclusions at the time. He also denied that he discussed with Peter Wright his findings (or the substance of Mr Wright's preparations for Leveson), beyond responding to requests for information. He said he did not see, at the time, the Field aide-memoire, nor a related note referring to Jonathan Stafford.

(2) Second, he was questioned about the mechanics of authorising payments on internal systems, including examples of authorisations of payments to Greg Miskiw in connection with items said to relate to stories. He explained that such authorisations could be "*tick-box*" approvals on the system, dealing with dozens each week, and that he would not typically ask questions unless there was reason to do so.

(3) Third, he was questioned about his involvement in police enquiries concerning Lee Harpin and an article concerning Luciana Berger, including the preparation of a list of payments and the process of matching those payments to articles. He accepted that he was likely involved in producing payment histories from the internal system and identifying relevant articles, and he accepted that the exercise involved considering whether particular passages might have been obtained by hacking (given the nature of the accusation being investigated), while maintaining that he had not known at the time of Mr Harpin's alleged reputation and that Katie Nicholl denied any knowledge that Mr Harpin (if he was doing so) used voicemail interception.

(4) Finally, he was cross-examined about US private investigators/search agencies (including Daniel Hanks and Capitol Inquiry) and the provision of payment information to the Leveson Inquiry. He accepted that he would have seen invoices of the kind shown, but said he did not see investigators' reports (only invoices) and denied having asked Mr Hanks to change trading names to make invoices appear "*less suspicious*". He accepted that he wrote to Mr Hanks seeking assurances about legality, but resisted the suggestion that this was a retrospective "*audit*" of past conduct. On the Leveson point, he said he did not know how the Leveson ledgers were compiled and could not identify who decided which agencies to include, explaining that he believed his involvement was limited to producing a "*TMOS timeline*" list which he did not then understand would necessarily be sent to Leveson, and he could not assist

further on the omission of Mail on Sunday payments to certain US agencies from the ledgers.

A2.246. The Claimants submit that Mr Wellington's evidence supports their broader case that the *Mail* titles used third parties to obtain information "*bound to have been obtained unlawfully*" (including ex-directory numbers, mobile subscriber information, itemised billing data and friends-and-family numbers), and that this would have been self-evident to journalists, desk heads and those approving payments. They rely in particular on (i) the evidence that commissioning and payment of private investigators was approved by senior executives (predominantly the managing editor and relevant desk head), and (ii) the absence of meaningful interrogation of that spending, exemplified (they submit) by Mr Wellington's evidence that he "*probably didn't even read*" invoices because he was busy and they were difficult to get through. They deploy those points in support of a submission that senior-level approval processes did not operate as an effective safeguard against unlawful procurement and instead demonstrate, at least, "*deliberate incuriosity*" at senior level.

A2.247. Associated submits that the Court should approach the evidence by applying ordinary principles as to burden of proof and inference-drawing, bearing in mind both the passage of time and the incompleteness of the surviving documentary record, and that serious allegations require cogent proof. It submits that many of the Claimants' broader allegations of "*habitual and widespread*" unlawful conduct were struck out, fell away, were abandoned, or were not pursued at trial, and that it is wrong to invite findings of wrongdoing (or knowledge) by inference without a proper evidential foundation. Associated also submits, in relation to particular allegations said to depend on authorisation of specific invoices, that the relevant proposition was not put to Mr Wellington (or to the relevant journalist) as an allegation of knowing authorisation for UIG.

A2.248. Mr Wellington was a senior managerial witness whose responsibilities placed him in direct contact with the financial mechanisms by which information was obtained. His evidence was generally careful but marked by a recurrent absence of recollection when pressed as to whether he made inquiries of journalists or otherwise investigated the provenance of material he had linked to payments. That position sits uneasily with both the nature of the exercises he undertook – such as compiling the Ross payments list – and the expectations of oversight inherent in his role. The Claimants have not suggested that Mr Wellington was dishonest in his evidence. Insofar as his evidence is relevant, I place particular weight on the contemporaneous documentary record, including invoices and associated documentation, and on the overall probabilities as to what a managing editor in his position would have known or appreciated. However, in agreement with Associated's submissions, Mr Wellington's evidence does not materially assist in determining the issues I have to decide.

(28) Alex Bannister
(26 February 2026)

A2.249. Alex Bannister is the Group Managing Editor and Editorial Director of DMGT. He was appointed Deputy Managing Editor of the *Daily Express* in 1999 and subsequently became Group Managing Editor of the *Daily Express* and *Sunday Express*. In November 2005, he joined the *Daily Mail* as Managing Editor. He was later appointed Group Managing Editor (in about 2008 or 2009), and in 2023 became

Group Managing Editor and Editorial Director of DMGT. In these roles, his responsibilities were managerial and administrative, including oversight of editorial budgets, staffing, contractual arrangements, and regulatory matters, rather than day-to-day editorial decision-making.

A2.250. Mr Bannister's evidence explained the functions of the Managing Editor's office and, in particular, the extent of his involvement in matters relevant to the issues in this case. He emphasised that his role was not operational in the sense of commissioning or supervising journalistic activity, but rather concerned with administration and oversight. When he joined the *Daily Mail* in 2005, he was not aware that enquiry agents were used by journalists. He became aware, at some point thereafter, that money was being spent on such agents in the course of reviewing editorial budgets. His understanding at that time was that enquiry agents were used to locate individuals so that journalists could put questions to them. He stated that he did not at that time consider whether the activities of such agents might breach the Data Protection Act 1998, nor was he aware of relevant guidance from the Information Commissioner's Office or the Press Complaints Commission.

A2.251. Mr Bannister described the steps taken following publication of the Information Commissioner's reports in 2006. These included the circulation of internal memoranda emphasising the need to comply with the Data Protection Act, communications with external agencies seeking assurances as to the lawfulness of their activities, and reminders to editorial staff of their contractual and professional obligations. He also referred to the maintenance of records of correspondence with such agencies. His evidence was that these steps were taken in response to heightened concern following the ICO reports, rather than because of any prior awareness of unlawful conduct.

A2.252. As to the use of Mr Whittamore and other enquiry agents, Mr Bannister's evidence was that he had no prior knowledge of Mr Whittamore, Operation Motorman or the associated criminal proceedings at the time he joined the *Daily Mail*. He accepted that, in his role, he would have authorised invoices for services provided by such agents, but explained that this was done as part of a routine process involving a large volume of invoices, and that he did not examine the detailed underlying entries. He had no role in instructing enquiry agents and did not involve himself in the detail of the work they carried out. He recalled a single meeting with Mr Whittamore, which he described as a routine commercial discussion concerning costs, and did not recall any substantive discussion about the nature of the services provided.

A2.253. Mr Bannister also gave evidence about the decision, taken in April 2007, to ban the use of enquiry agents. He described that decision as one taken by the Editor and implemented rigorously. He assisted in its implementation by writing to external agencies, informing staff of the ban, and ensuring that the accounts department ceased payments to those agencies. He stated that the ban was taken seriously and reinforced by subsequent communications, and that non-compliance would have been treated as a disciplinary matter. He accepted that, notwithstanding these measures, it was not impossible that a payment might have been overlooked, although he did not recall any such instance.

A2.254. In their closing submissions, the Claimants rely on Mr Bannister's evidence as part of their broader case concerning the systems and practices within Associated.

They submit that his evidence demonstrates that senior management could approve payments to enquiry agents without examining the underlying work, and that such processes did not provide an effective safeguard against UIG. The Claimants do not suggest that Mr Bannister's evidence was dishonest or knowingly untrue. Their case is directed to the inferences to be drawn from the systems he described and the weight to be given to his evidence in that context.

A2.255. Associated submits that Mr Bannister was a senior administrative witness whose role did not involve operational involvement in journalistic sourcing. It relies on his evidence to demonstrate that, prior to the ICO reports, there was no awareness at senior management level of unlawful practices, and that, once concerns were raised, appropriate and effective steps were taken to ensure compliance, including the eventual ban on the use of enquiry agents. Associated further submits that his routine approval of invoices does not support any inference that he was aware of, or sanctioned, unlawful activity.

A2.256. Mr Bannister was a careful and measured witness who was generally clear as to the limits of his recollection, particularly given the passage of time and the nature of his role. The Claimants did not suggest that he was dishonest in his evidence, and I accept that his account was given honestly. His evidence was also consistent in emphasising the managerial and administrative character of his responsibilities, and the absence of operational involvement in the commissioning or supervision of journalistic activity. However, for those very reasons, his evidence is of little (if any) assistance on the issues that I must determine. In particular, his lack of direct involvement in, and knowledge of, the sourcing of stories means that his evidence does not materially advance the Court's assessment of whether UIG occurred in relation to the Articles or incidents in issue, or the extent to which such conduct was known, authorised or condoned within Associated.

(29) Charles Garside
(27 February 2026)

A2.257. Charles Garside is a retired journalist. During his career, he has worked at several publications, including the *London Evening Standard*, *The Times*, the *Sunday Express*, *The European* (where he became Editor and General Manager in 1992 and later Editor-in-Chief), and the *Daily Mirror*. He took a break from journalism in 1998, when he bought and ran a hotel in the Lake District. He was persuaded by Robin Esser to return to newspaper management as Managing Editor of the *Daily Mail* in July 2004, overlapping for several months with his predecessor. He left the *Daily Mail* in April 2017 (returning briefly thereafter to provide holiday cover for Alex Bannister). He now sits as a board member of IPSO and is a trustee of the charity associated with St Bride's, Fleet Street.

A2.258. Mr Garside's evidence described the role of the Managing Editors' office at the *Daily Mail* as distinct from the editorial side of the paper and not involved in day-to-day copy production. The office comprised, in substance, Mr Garside, Robin Esser, John Bryant (until 2005) and, from late 2005, Alex Bannister. They reported directly to Paul Dacre as Editor-in-Chief (or, in his absence, the duty editor). Mr Garside described his own principal focus as complaints-handling (PCC/IPSO and legal complaints), alongside other managerial functions including production flow, rotas, onboarding, training and dissemination of the Editors' Code, liaison with other media

and industry bodies, cost management, and authorising payments to third parties (including cash expenses).

A2.259. A principal theme of Mr Garside's evidence concerned enquiry agents and the impact of the ICO's "*What Price Privacy?*" reports. In his witness statement, Mr Garside said that he remembered discussing the ICO reports with journalists, and that they explained enquiry agents were used to obtain phone numbers and addresses so that individuals could be contacted for checking stories and rights of reply. He also said that Robin Esser was involved in speaking to journalists and similarly understood agents had been used for addresses and phone numbers. He could not recall when he first found out about Steve Whittamore's arrest/charging, or when he appreciated that Mr Whittamore was the "*Hampshire detective*" referred to in the ICO material. In response to the ICO reports, he had sent letters to various agencies seeking reassurance as to compliance with the Data Protection Act 1998; and he had issued memoranda (including those which communicated a ban on outside search agencies in 2007). He recalled that accounts were told not to pay agencies on the relevant lists and that the ban was unpopular, with internal library resources increased thereafter.

A2.260. In cross-examination, Mr Garside was taken in some detail to the content of the ICO reports and, in particular, to the description of Operation Motorman and the kinds of information obtained by the "*Hampshire detective*" and by blagging/corruption. He accepted that the table in "*What Price Privacy Now?*" showed the *Daily Mail* at the top of the newspapers identified as having commissioned Mr Whittamore, and that this would have been a matter of concern. He was challenged that, if he was discussing the reports with journalists (as his witness statement suggested), he must have appreciated that the reports were referring to Mr Whittamore and to the acquisition of information that went well beyond lawful contact details. Mr Garside's evidence was that he did not, at the time, make the connection with Mr Whittamore and did not recognise (at that stage) the significance of terms such as "*blag*".

A2.261. He accepted that he had signed invoices for JJ Services and other TPIs, but explained that a large number of invoices came into the office already approved by department heads and were signed in volume, without detailed scrutiny of the underlying entries. He was pressed with examples of invoice entries referring to matters such as "*telephone conversion*", "*friends and family*" and other categories of enquiry. His evidence was that he did not, at the time, understand those to be indicative of unlawful activity and only later appreciated the nature of what had been occurring when attention was focussed on the materials.

A2.262. Mr Garside also gave evidence concerning events in 2011. In his witness statement he recalled Liz Hartley's internal review and Eddie Young's assistance, and said he was not aware of any *Daily Mail* journalist phone hacking or commissioning phone hacking. He recalled that Associated were permitted to attend the ICO's offices to inspect spreadsheets derived from the Operation Motorman material and that he collated documents for the legal team. His recollection, refreshed by those documents, was that he identified which individuals referred to in the spreadsheets/invoices remained employed and sought to identify whether published articles could be linked to the work recorded. He stated that it was not possible to identify articles for each spreadsheet entry or invoice, and that where articles seemed interview-based, Mr Whittamore may simply have supplied contact details, but he had not established that conclusively. He said Eddie Young spoke to some of the individuals named and

(as recalled by Mr Garside) was told that journalists had asked Mr Whittamore for telephone numbers and addresses.

A2.263. In cross-examination, Mr Garside was challenged that the material he reviewed contained entries (including "*friends and family*", vehicle registration checks, mobile conversions and blags) that went beyond contact details, and that his witness statement did not engage with those broader features. He also denied having any involvement with, or knowledge of, a series of ledger printouts said to have been generated in June 2011 and later found in a "*Man Ed*" box (the so-called "*Pandora's box*"). He said he could shed no light on how those documents came to be printed or retained and maintained that he had nothing to do with that exercise.

A2.264. In their closing submissions, the Claimants rely upon Mr Garside's evidence as part of their broader case concerning the use of private investigators and the evidential significance of (i) the scale of payments shown by disclosed ledgers (including what they characterise as a "*Pandora's box*" of ledger material), and (ii) the availability of lawful databases and resources to journalists such that resort to external agents is said to require explanation. In that context, they refer to oral evidence at trial (including Mr Garside's evidence) concerning use of BT Directory Enquiries and other lawful resources, and they deploy the June 2011 ledgers as supporting an inference of structured and substantial use of certain agencies.

A2.265. Associated, in its closing submissions, emphasises (i) that the documentary record is incomplete given the passage of time and retention practices and that the Court must assess all the evidence, including oral evidence; and (ii) the proper (common-sense) approach to drawing inferences. It submits that the Claimants' cross-examination of certain witnesses (including Mr Garside) on matters said to relate to "*Leveson Lies*" was irrelevant to any issue in dispute, and that although those witnesses gave straightforward and credible evidence, it does not assist the Court in resolving the issues it must determine.

A2.266. My assessment of Mr Garside is that he was an honest witness. No allegation of dishonesty was advanced against him. I accept his evidence as given. However, for essentially the same reasons as in the case of Mr Bannister, Mr Garside's evidence has little (if any) relevance to the issues that fall to be determined. His role was managerial and administrative; he was not involved in commissioning or supervising the acquisition of information for the pleaded Articles; and much of the evidence he gave concerns background systems, policies and responses over time rather than the article-specific questions I must decide.

(30) Rebecca English
(2 March 2026)

A2.267. Rebecca English is the Royal Editor of the *Daily Mail*. She began her early career as a journalist doing shift work for national newspapers around 1995, mostly for *Daily Express* but also for the *Daily Star* and the *News of the World*, before eventually taking a full-time job at the *Daily Express* in or around 1996. She started working for the *Daily Mail*, as a general news reporter on contract, in January 1999. She became Royal Correspondent before taking up her current role as Royal Editor in 2020.

A2.268. Ms English was a significant witness because she is bylined on six of the Articles: Articles (4), (26), (34), (38), (47) and (56). That, in turn, meant that her evidence mattered not only on the sourcing of those individual publications, but also in relation to the broader issues of journalistic practice, propensity, and the use (if any) of TPIs and other third-parties.

A2.269. She gave evidence about her general journalistic practices as well as the sourcing of the individual Articles complained of. In their closing submissions, the Claimants treated Ms English as one of the "*four key journalists*" in the litigation (alongside Stephen Wright, Katie Nicholl and Nicole Lampert) and submitted that the credibility and propensity of those witnesses was of "*huge importance*", not least because together they accounted for a substantial proportion of the articles and episodes in issue. The Claimants contended that the Court should not take such evidence "*at face value*" and that it should be rejected unless supported by "*concrete contemporaneous documentation*".

A2.270. In relation to Ms English specifically, they submitted that the documents concerning Mike Behr were highly incriminating, that her explanations of them were wholly implausible, and that her credibility was seriously undermined by the way she dealt with those documents in cross-examination. Associated, by contrast, submitted that Ms English was a professional journalist who had given honest evidence about conventional sourcing methods; that the allegations concerning Mr Behr had in significant respects shifted at trial beyond what had been clearly pleaded; that she had plainly denied commissioning or knowingly using unlawfully obtained information from him; and that, when the documents were examined carefully and in context, they did not justify rejection of her evidence or the drawing of the inferences for which the Claimants contended.

A2.271. Mike Behr is undoubtedly a key figure in relation to Ms English. In her written evidence Ms English said that she knew him as a freelance journalist or "*stringer*" based in Cape Town who could help on Africa-related stories when she was not on the ground. In her first witness statement, she said that she had found him on the paper's list of stringers, which indicated to her that others at the paper had worked with him and found him reliable; that many of the stories he offered were researched and written up by him from start to finish, whilst others were simply tips; and that he said he had very good contacts and sources. Her evidence was that she believed the information he provided was obtained properly. She also said that there were occasions when, if both the *Daily Mail* and *The Sun* were interested in the same broad story, the cost of Behr's time might be shared as part of a day-rate arrangement. In her second witness statement, she reaffirmed that evidence and said that it was in that capacity, as a freelance journalist helping on Africa-angle stories, that she tasked him to assist her when she could not report a matter personally on the ground.

A2.272. The documentary record, however, shows that the professional relationship between Ms English and Mr Behr was close and practical. It shows repeated direct contact between them and a working relationship in which he was asked to "*keep an eye*" on stories, report back what he had found, and discuss payment. Thus, in connection with Article (47), in the email of 7 December 2007 (see main judgment [1174]), Mr Behr sent Ms English (copied to Duncan Larcombe at *The Sun*) precise flight and seat details for Chelsy Davy together with the suggestion that they might "*plant someone next to her*".

A2.273. In connection with inquiries about Cressida Bonas, in December 2013, he told Ms English that he had "*done all the checks I can today*", that he would "*check daily*", that he had "*no indication that she is coming to [Cape Town]*", and asked whether she wanted him to "*keep an eye on it*" for the week. Ms English replied, "*Yes please – let's see what turns up tomorrow. And thanks*". Two days later he wrote that he could "*confirm*" a further flight, asked who Prince Harry's "*tecs*" were, and, after being told by Ms English that Bill Renshaw was "*definitely with him*", provided flight details for BA58 and asked how much she was "*putting through for assistance so far*".

A2.274. On 19 December 2013, Mr Behr wrote that Prince Harry was "*only leaving tomorrow*", that he knew the hotel, had "*seen bill*", and had "*no reg of her at hotel*". The later payment exchange, in January 2014, raises a real question as to whether Mr Behr was seeking to be paid for something more than ordinary freelance time and expenses. On 15 January 2014, he told Ms English that the £350 already paid for "*Harry work*" did not "*cover the info provided*" and that it was "*simply not worth it*"; on 16 January 2014 he said that he did not want "*to go into why I'm asking for more in an email*"; and on 18 January 2014 he asked for two more day rates "*not for time spent but for going out on a limb*".

A2.275. In cross-examination, it was put to Ms English that these emails meant that Mr Behr was seeking payment for the cost, or risk, of unlawfully obtaining information. She rejected that. Her evidence was that the paper only ever paid him as a freelance journalist on a day-rate basis; that she did not understand "*going out on a limb*" as a request for payment connected with unlawful activity; and that her own response – "*I'm not sure I have ever heard of let alone been asked about 'going out on a limb' payments but will put it through…*" – reflected that lack of understanding rather than any acceptance that he was referring to UIG.

A2.276. In her second witness statement, Ms English accepted that the December 2013 emails showed that she had, in fact, asked Mr Behr to help her on that story, even though she had not remembered doing so at first reading. Her evidence was that this was an example of normal journalistic use of a local freelancer: it would have been too expensive to send a reporter from London to Cape Town for only a day or two, so she had contacted a trusted stringer to check information, keep an eye on the developing story, and see whether there were pictures or a celebratory-dinner story to be had if the opportunity arose. She said she understood him to be doing what a stringer would ordinarily do – checking with contacts, keeping watch on the story, and reporting back – and that she believed the background travel information was also being publicly briefed by the relevant charity.

A2.277. A further aspect of Ms English's evidence was that her dealings with Mr Behr, particularly about money, were often difficult. In cross-examination about the January 2014 payment emails, she described him as "*very pushy*" and, more generally, as "*a very difficult person to deal with*", adding that he was particularly difficult "*when it came, unfortunately, to women*". She said that he often wanted to get her on the telephone and that she would try to keep him at arm's length. That evidence formed part of her explanation for why some of her email responses were brief and accommodating, and why she did not treat the January 2014 language as an acknowledgment or disclosure of unlawful conduct. In cross-examination, Ms English maintained that Mr Behr was a freelance journalist, not a private investigator, and she denied that she had ever knowingly used him for UIG.

A2.278. The parties' submissions differed sharply as to what should be made of that relationship. The Claimants submitted that the surviving Behr documents showed a pattern of Ms English receiving, and in some instances paying for, what they argue was plainly unlawfully obtained information, especially flight information, and that her responses in cross-examination displayed a willingness to resort to improbable explanations in order to avoid the obvious implications of those documents. Associated submitted, by contrast, that the documents showed no more than the use of Mr Behr as a South Africa-based freelancer; that where apparently incriminating documents existed, they either were not addressed to Ms English or were capable of explanation by legitimate stringer work and shared day-rate arrangements; and that the Court should be slow to convert disputed documentary inferences into wider findings of dishonesty on her part.

A2.279. I accept Ms English's evidence about the general nature of her relationship with Mr Behr. In my judgment, she did use him as a local freelance journalist or stringer in South Africa, particularly on stories with an Africa angle where she was not on the ground herself; and I accept her evidence that, at the time, she understood him to be someone who obtained information through local contacts and ordinary freelance journalistic work. Her evidence on that general relationship is consistent with the documentary picture of repeated direct contact, requests for assistance, and day-rate or similar payment discussions.

A2.280. There are several dangers in taking the analysis of Mr Behr too far in the manner urged by the Claimants. First, some of the more apparently incriminating material consists of communications between Mr Behr and Duncan Larcombe to which Ms English was not party and which, on her evidence, she had not seen. Those documents may illuminate the relationship between Mr Behr and Mr Larcombe, but they provide only a limited basis for drawing conclusions about what Ms English knew or understood at the time. Second, Mr Behr did not give evidence. I would therefore be slow to draw firm conclusions, in the abstract, that the documents show he was engaged in UIG, although some of them plainly raise real questions as to how certain information could have been obtained lawfully. That is particularly so where the parties' submissions sought to move from the existence of apparently suspicious documents to broader conclusions about method, knowledge and responsibility. Thirdly, there is a risk of hindsight in the analysis: that is, of reasoning back from a conclusion that Mr Behr was using UIG and then reading contemporaneous documents as though they necessarily carried that meaning for Ms English at the time, rather than asking what those documents would reasonably have conveyed to her then.

A2.281. That caution is particularly relevant to Article (47). The theory that Mr Behr had obtained Ms Davy's flight details by UIG and passed them to Ms English was pursued at trial, and the evidence plainly raises a question as to how he could lawfully have obtained that information. But the extent to which that theory was proved, and whether any such obtaining was commissioned by Ms English or knowingly used by her, required careful article-specific analysis in the main body of the judgment.

A2.282. In my judgment, the evidence about Mr Behr establishes that Ms English had a real and direct working relationship with him over a number of years; that she used him as a trusted local freelancer in South Africa; that she was willing to ask him to pursue or monitor stories for her; and that his assistance was the subject of repeated discussion about payment. The documentary record does not support any suggestion that he was

a marginal or one-off contact. At the same time, much of Ms English's evidence as to how Mr Behr obtained particular pieces of information rested not on direct knowledge of his methods, but on her understanding or assumption, at the time, that he used contacts and ordinary freelance journalistic techniques. Some of the documents – particularly those referring to flight information, hotel information, and payment for "*the info provided*" or for "*going out on a limb*" – raise a real question whether Mr Behr was, at least on some occasions, seeking remuneration for something more than ordinary journalistic work. But I would be cautious about moving from that proposition to firm findings, outside the context of the individual Article analyses, as to whether Mr Behr was in fact engaged in UIG and, if so, whether Ms English appreciated that at the time. Those are matters that require article-specific assessment in the main body of the judgment.

A2.283. Overall, I found Ms English to be an impressive and honest witness. She was careful about the extent of her recollection, and where her evidence about Mr Behr rested on understanding or assumption rather than direct knowledge, that was generally apparent from the way she gave it. The proper approach to her evidence, in light of the parties' competing submissions and the documentary issues concerning Mr Behr, is therefore to assess (a) what she can say reliably and specifically about sourcing for each Article, (b) what is corroborated (or undermined) by the documentary record, including the material concerning her dealings with Mr Behr, and (c) what weight (if any) can fairly be attached to inferences invited by either party where the evidence is necessarily incomplete given the age of the publications.

(31) Nicole Lampert
(3 March 2026)

A2.284. By the time she left Associated, Nicole Lampert was an experienced showbusiness journalist. Her early career saw her at *The Sun* from 1998 to 2002, where she worked on the showbiz column *Bizarre,* becoming the Deputy Showbiz Editor. She joined the *Daily Mail*, in 2002, as Deputy Showbusiness Editor, becoming Showbusiness Editor in 2003. She left the paper in August/September 2006.

A2.285. Ms Lampert is another key witness because she is bylined on seven of the Articles: Articles (10), (14), (15), (24), (27), (30) and (33).

A2.286. Ms Lampert explained that, at the *Daily Mail*, the Showbusiness team straddled news and features and reported to Tony Gallagher and later Chris Evans. For news pieces, she would write her own stories. For features, in her early days, the practice would be to partner with a Features or *Femail* journalist. That journalist would be tasked with writing up the story and the showbusiness writer would provide information from their sources. Often, but not always, they would share a byline. Later, Ms Lampert said she wrote her own features.

A2.287. Ms Lampert accepted (and indeed emphasised) the pressures of daily production, the importance of speed, and the extent to which stories were assembled from a mixture of pre-existing reporting, pictures, wire copy and human sources. In her witness statement she was frank that, given the age of the publications, she did not initially recall most of the specific Articles, and that she therefore refreshed her memory by re-reading the Articles and comparable reporting from the period. She also gave a candid account of the way in which information could be obtained and shaped

into publishable copy, including her evidence that quotations attributed to a source were not necessarily verbatim and that she felt she had "*some licence*" to shape what she had been told (already at one remove) into quotations that would fit the article.

A2.288. So far as information-gathering is concerned, she accepted that she had been introduced to (and on occasion used) ELI; that she was aware of instructions to ELI from her team; that she would sometimes speak to ELI herself; and that, as department head, she approved ELI's invoices. She maintained, however, that ELI were used as a shortcut for obtaining information she believed to be publicly obtainable (addresses, telephone numbers, certificates) and that she never asked for, and would not have imagined being provided with, financial or medical information or phone hacking. She did accept, looking back, that some enquiries "*could have involved*" blagging (for example, enquiries of hotels about where someone was staying). In cross-examination she resisted the proposition that the levels of ELI charges showed that she must have been obtaining materially different (and unlawful) information; she accepted that call data was obtained "*once*", but otherwise disputed the suggested inferences.

A2.289. The Claimants pressed a sustained case that the nature, intimacy and specificity of some reported material could not plausibly be explained by the benign sourcing routes described in her statement, and sought to test her evidence by reference to (i) the absence of surviving notes, (ii) the destruction/non-retention of underlying invoices, and (iii) the disparity between in-house search tools and the sums charged by ELI. During Ms Lampert's cross-examination, the Claimants sought permission to put to her an article said to relate to her time at *The Sun*, in order to challenge her account of what ELI did for her and to support an argument of propensity/credibility. Associated objected in strong terms, describing this as beyond the Court's earlier ruling, and also as an "*ambush*". Permission was refused. As the Court had ruled before the trial, propensity evidence was required to be pleaded. It could not be deployed, mid-cross-examination, under the guise of a challenge to credit.

A2.290. The parties' closing submissions take materially different positions on the reliability of Ms Lampert as a witness and the weight to be given to her explanations. The Claimants submit that, as with the other "*key*" journalists, the Court should not take her evidence "*at face value*" and should treat it with caution unless supported by concrete contemporaneous documentation. They rely, in particular, on what they characterise as the illuminating nature of her cross-examination and on her admissions about the use of ELI, which (they submit) stand out against the broader pattern of limited recollection and denial in Associated's witness evidence. They further submit that, when pressed on matters that were difficult for Associated, she sometimes reverted to denial of uncontroversial propositions or advanced implausible or novel explanations; and they point to transcript passages in which she accepted that, in respect of some articles, her account of sourcing was necessarily speculative because she could not remember where the story came from.

A2.291. Associated, by contrast, submits that there is no pleaded propensity case against Ms Lampert and that the Claimants' cross-examination sought to advance a generalised case about her use of ELI which went beyond what had been permitted. Associated accepts that she acknowledged limited instances of "*blagging*" by ELI and a single occasion on which call data (in the form of a telephone bill) was obtained, but submits that her evidence, taken as a whole, was that ELI was used primarily as a

means of obtaining contact information. It submits that the Claimants invited the Court to draw inferences of UIG from loose temporal proximity between payments and publications without identifying and putting the relevant payment(s) or evidential foundation; and it relies on her emphatic denials of suggestions such as blagging the police, contending that such allegations were unevidenced, unpleaded and inherently improbable.

A2.292. On the specific point relied upon by both sides concerning the change in her account of the source of the figure reported in the article concerning the cost of wedding security, the Claimants submit that the shift from "*guesstimate*" to attribution to Gary Farrow illustrates an unreliable and ex post facto reconstruction, whereas Associated submits that her reconsideration was a credible response to evidence confirming the figure's accuracy and consistent with her attempt to assist the Court using inherent probabilities in circumstances of limited present recollection

A2.293. I found Ms Lampert to be a careful and impressive witness. She did not seek to overstate what she could now remember. On the contrary, she repeatedly, and in my assessment properly, distinguished between matters she could recall, matters she could reconstruct only from the Articles and the available contemporaneous material, and matters as to which she could do no more than identify inherent probabilities. That inevitably limits the extent to which her evidence can provide a complete account of the sourcing of Articles published more than 20 years ago; but it is a factor supporting, rather than undermining, her general reliability.

A2.294. She was candid about the use made of ELI, including that ELI had on occasion been used for blagging and that call data had been obtained once, but she was equally clear about the limits of that evidence and about what she did not ask or expect ELI to provide. When confronted with serious allegations of unlawful information gathering, including voicemail interception and the alleged blagging of the police or other bodies, she responded calmly, firmly and without exaggeration. I accept her evidence as honest. That does not mean that every reconstruction she offered as to the likely source of a particular detail can be treated as established; in several instances she fairly acknowledged that she was reasoning retrospectively rather than speaking from present specific recollection. But I do not accept that such reconstruction was a device to conceal wrongdoing. Her evidence must therefore be approached with the caution inherent in evidence about old publications and incomplete records, but I regard her as a truthful witness whose limitations were openly acknowledged.

A2.295. As with Ms English, the proper approach to Ms Lampert's evidence, in light of the parties' competing submissions, is therefore to assess (a) what she can say reliably and specifically about sourcing for each Article, (b) what is corroborated (or undermined) by the documentary record, and (c) what weight (if any) can fairly be attached to inferences invited by either party where the evidence is necessarily incomplete given the age of the publications.

(32) Richard Simpson
(4 March 2026)

A2.296. Richard Simpson was a reporter and later desk editor on the *Daily Mail* showbusiness desk from 2004 until around 2011. He had previously worked at several national and regional newspapers. He gave evidence about the character of showbusiness reporting

at the *Daily Mail*, newsroom pressures, his approach to sourcing, his use of ELI/BDI, and his involvement in a Schedule C article and Articles (48) and (49).

A2.297. Mr Simpson described himself as an "*old school*" journalist who relied principally on contacts, confidential sources, PR contacts, public-domain material and press agency material. His evidence was that he used ELI/BDI only for obtaining telephone numbers and addresses quickly, particularly under deadline pressure, and not for unlawful information gathering. He accepted that, at the time, he did not give thought to how external agencies obtained such information, and that some numbers obtained may have been ex-directory or mobile numbers which would not ordinarily be publicly available.

A2.298. The detail of Mr Simpson's evidence in relation to Articles (48) and (49). In summary, his evidence in relation to Article (48) was that the article developed earlier diary reporting and that the additional detail came from a long-standing confidential human source, EH14-A. His evidence in relation to Article (49) was that his own role was essentially a rapid rewrite from material already in the public domain, together with PA copy and the statement on Sir Elton John's website, and that any additional source detail was more likely, if there was any, to have come through Ben Todd's PR contacts. He fairly acknowledged the extent to which some of that evidence was reconstruction rather than present recollection.

A2.299. I found Mr Simpson to be a credible and generally reliable witness. He gave his evidence in a straightforward manner, made appropriate concessions, and was careful to distinguish between recollection, reconstruction from documents, and speculation. He accepted that he could not remember many individual transactions or payments and did not seek to advance speculative explanations beyond what he could properly support. That approach enhanced, rather than undermined, the reliability of his evidence.

A2.300. I accept Mr Simpson's evidence that he did not knowingly procure, instruct or participate in UIG through ELI/BDI. His failure at the time to ask how external agencies obtained numbers, including ex-directory or mobile numbers, is a matter to be borne in mind when assessing the surrounding records; but it does not, without more, establish knowledge of, or participation in, UIG. Where his evidence involved reconstruction, I treat it with appropriate caution. Within those limits, I regard him as a truthful witness.

(33) Sharon Churcher
(4 March 2026)

A2.301. Sharon Churcher is a freelance writer and reporter based in the United States. She has been a journalist for over 40 years and was the Chief American Correspondent for the *Mail on Sunday* for over 20 years from 1992 to 2013. She is now 78 years old. Her long career began in the late 1960s/early 1970s and included work at Oxford University, Thomson Newspapers, and later a range of North American publications. She worked for the *Mail on Sunday* from 1992 until October 2013, primarily based in New York, and subsequently worked in investigative/editorial roles and as a freelancer.

A2.302. Ms Churcher's evidence was given remotely from the United States. Her principal evidence is contained in her amended first witness statement. She emphasised both the importance of protecting confidential journalistic sources and the particular sensitivity of her source materials in relation to her long-running reporting on Jeffrey Epstein, including prior attempts to subpoena her newsgathering materials in US litigation. She stated that she wished to assist the Court while balancing those obligations and legal protections.

A2.303. The pleaded case against Ms Churcher concerned two main areas: (i) Article (53), in relation to the claim of Sir Elton John and David Furnish, on which she was bylined with Caroline Graham; (ii) a claim that she had a propensity to use UIG relying upon "*Why Yoko Ono's secret granddaughter will inherit John Lennon's millions*": *Mail on Sunday*, 7 January 2001; (iii) allegations concerning the obtaining of Epstein-related documents via Dan Hanks and an intermediary, Mike Fisten; and (iv) a Summit Credit & Legal Services payment said to relate to an article concerning Peter Mandelson of 4 December 2005).

A2.304. Standing back, I found Ms Churcher to be an experienced journalist who gave her evidence in a direct and, in material respects, candid way. Article (53) is the core allegation relied upon for Sir Elton John and Mr Furnish's claim, but the Claimants did not allege (or put) that Ms Churcher herself used UIG to obtain information for that Article; indeed, no allegation of UIG was put to Ms Churcher in cross-examination in relation to Article (53). In those circumstances the alleged "*propensity*" case against her falls away.

A2.305. More specifically, the episodes relied upon by the Claimants as supposed propensity evidence did not persuade me that Ms Churcher knowingly commissioned any UIG. The criticism with the greatest potential force is her acceptance that some reports provided via Dan Hanks contained Social Security numbers and that she "*should have noticed*" them. But her evidence was that she did not notice them at the time, that they were "*of no use*" to her, and she responded – straightforwardly – by asking what she was supposed to do with them, adding that she "*ha[d] no idea*" because her objective was simply to find addresses/telephone numbers to seek comment. That evidence was not delivered evasively; it was, in my view, an honest acknowledgment of a lapse of attention, rather than evidence of knowing (or reckless) participation in wrongdoing.

A2.306. Finally, I formed the clear impression that Ms Churcher was affronted by the allegations of impropriety advanced against her in cross-examination: she strongly rejected the more serious suggestions (including those founded on Mr Hanks' account), describing him in trenchant terms and making plain – sometimes with evident indignation – that she regarded aspects of the case being put to her as wholly inconsistent with how she worked as a journalist. That reaction was consistent with a witness who considered herself wrongly accused; it did not cause me to conclude that she was exaggerating or dissembling about the matters that she could properly answer.

(34) Richard Price
(5 March 2026)

A2.307. Richard Price is now employed in a communications-training role at a global PR company. He read Theology at Exeter College, Oxford, obtained a postgraduate diploma in journalism at City University, and worked as a graduate trainee at the

Liverpool Daily Post & Echo before joining the *Daily Mail* in August 1999. He held a range of reporting roles before becoming a Senior Feature Writer in October 2004. He left the *Daily Mail* in 2007 to establish a freelance news and features business, and continued to write for the newspaper as a freelancer for a period.

A2.308. Mr Price provided two witness statements and gave oral evidence. His evidence concerned: (i) the Schedule C article "*What's making Kylie smiley?*" (*Daily Mail*, 4 February 2006), relied upon by the Claimants as propensity/inference material; and (ii) Article (42), relied upon in Ms Hurley's claim.

A2.309. As to "*What's making Kylie smiley?*", Mr Price said that he remembered writing the article. He described it as a typical Saturday "*long read*", largely informed by press cuttings but supplemented by two human sources. He denied that it was based on telephone records, denied commissioning any UIG, and said that he had never heard of Daniel Portley-Hanks before these proceedings. In cross-examination, he accepted that he had not produced cuttings to support the specific "*telephone contact*" passages, and could not now recall which source supplied which part of the Article. He nevertheless maintained that the telephone-contact material did not come from within the newsroom and that he had never seen the call data materials before these proceedings. There was no evidence that Mr Hanks sent the relevant call data to anyone at Associated, or that anyone at Associated commissioned him to obtain it.

A2.310. As to Article (42), Mr Price said that he remembered writing the Article. He described it as a light showbusiness feature, written when he was freelancing, and overwhelmingly derived from cuttings and publicly available reporting. He said that the remaining material, including references to Ms Hurley's dieting and to calls involving Ms Hurley, Mr Nayar and Mr Grant, came from a conversation with a confidential source who knew the principals. He was certain that he did not use System Searches for the Article.

A2.311. Mr Price was also asked about a *Daily Mail* cashbook entry, dated 12 March 2007, recording a £4,000 "*special payment to contact for exclusive information and assistance on Hugh Grant/Jemima Khan*". He said that he did not recognise the payment, did not know who it was made to, and that it had nothing to do with him: he did not make it, request it, or arrange it. In oral evidence he maintained that position, and maintained that £4,000 would be a large payment in the context of showbusiness "*write-throughs*".

A2.312. In cross-examination, the challenge to Mr Price focused on whether the more specific information in Article (42) could truly have come from the confidential source he described, on his prior use of System Searches in about 1999–2000, and on the significance of the System Searches ledger material and the £4,000 cashbook entry. Mr Price maintained that his source was in a position to provide the relevant "*colour*"; that he could not give the "*very simple explanation*" without revealing the source's identity; that he had not used System Searches for this Article; and that the £4,000 payment was unconnected with him or the Article.

A2.313. At the conclusion of the cross-examination, the Court required the Claimants to identify precisely what mechanism of unlawful acquisition was being alleged and how it was said to connect to Mr Price's Article. The case then articulated was that the relevant information had been provided to Mr Price "*by the desk*", and that the dieting

information had been obtained through voicemail interception, while it was expressly disavowed that Mr Price himself had committed voicemail interception.

A2.314. I found Mr Price to be a credible and clear witness. His answers were direct and unembellished. He accepted the limitations inherent in giving evidence about articles written many years ago, including his inability now to allocate every detail in the "Kylie" article to a particular source and his inability to provide a full audit trail for the cuttings used in Article (42). Those concessions were made frankly. Where he declined to expand on the identity or position of a confidential source, he did so on an intelligible and consistent basis, namely source protection, rather than by offering speculative reconstruction.

A2.315. For the reasons given in the main judgment in relation to Article (42), I accept Mr Price's evidence that the Article was largely derived from prior reporting and supplemented by information from a confidential source; that he did not use System Searches for the Article; and that the £4,000 cashbook entry had nothing to do with him or his Article. I also accept Associated's criticism that the Claimants' case in relation to Article (42) lacked proper definition and shifted during the course of cross-examination. Mr Price's evidence did not provide a reliable basis for any finding of UIG by him, nor did the "Kylie" article provide any sufficient propensity or inferential support for Ms Hurley's claim.

(35) Caroline Graham
(5 March 2026)

A2.316. Caroline Graham is *The Mail on Sunday*'s US Editor. She has been a journalist for roughly 40 years. She began her career, at 18, after training through the National Council for the Training of Journalists, worked on a local paper, later freelanced, and then worked for *The Sun* (including as its US Editor from 1992 to 1999). She joined *The Mail on Sunday* in spring 1999 after being approached by Peter Wright, working as the paper's Los Angeles correspondent from 1999 and (from 2013) as US Editor.

A2.317. In her first witness statement, Ms Graham explained that the relevant events were many years ago and her memory varies. She also explained that she underwent chemotherapy following a cancer diagnosis in January 2007, which she said has affected her memory. She stated that she retained hard-copy files, notebooks and diary planners for some (not all) stories and that she had been able to refer to those records in preparing her evidence.

A2.318. Ms Graham provided two witness statements (a first, and an amended second addressing newly pleaded allegations concerning Dan Hanks) and gave oral evidence.

A2.319. A substantial part of Ms Graham's evidence addressed her working relationship with Dan Hanks, whom she said she used relatively regularly until around 2010/2011, mainly for telephone numbers and addresses (and sometimes background information). She said he presented his methods as legal, that she asked him if what he did was legal and he said it was, and she denied ever asking him (or anyone else) to obtain information she knew or suspected would be obtained unlawfully.

A2.320. Cross-examination focused on the presence of Social Security numbers ("SSNs") in Mr Hanks' reports. Ms Graham maintained she did not ask for SSNs and did not use

them; she said she did not notice them at the time and produced documents containing SSNs during the litigation exercise of searching her files. She was challenged on the prominence of SSNs in the reports and on why she did not object; she maintained that her purpose was to obtain contact details, and she said she would not know what to do with an SSN.

A2.321. The Claimants also relied upon a 2004 toll/call-records report relating to Denise Martell (annotated in Ms Graham's handwriting). Ms Graham's supplemental statement explained (in substance) that she assumed she must have asked Mr Hanks to obtain a telephone call list to test a tip that Ms Martell was back in contact with Prince Andrew, and she said she rang numbers to see who answered and noted accents, while denying any pretence, voicemail hacking or tapping. In cross-examination, she maintained that she rang and hung up and did not speak to people (or did not "introduce" herself); it was put to her that the manuscript notes reflected enquiries made without introducing herself as a journalist.

A2.322. Ms Graham's evidence bore on two broad areas: first, article-specific issues which I address in the main judgment, including Prince Harry's claim in relation to Article (25) and the claim of Sir Elton John and Mr Furnish in relation to Article (53); secondly, the wider "*propensity/inference*" issues raised by the Claimants' reliance on Mr Hanks' work product (including SSNs and call/toll records) and what, if anything, should be inferred from the presence of such material in the files of a journalist.

A2.323. The article-specific issues to which Ms Graham's evidence relates are dealt with in the main judgment. So far as Article (27) is concerned, see [745]-[783]. So far as Article (53) is concerned, see [1314]-[1347].

A2.324. The Claimants submit that Ms Graham was a regular commissioner of Mr Hanks and received work product containing sensitive identifiers (including SSNs), and they invite the Court to treat as implausible her evidence that she did not notice SSNs "*at the time*" notwithstanding their prominence and the extent of her use of Mr Hanks. They submit that her evidence was unconvincing and that she gave an implausible account when asked how she came to annotate a call/toll record document (their case being that the manuscript annotations reflect information obtained by presenting as someone other than a journalist, i.e. blagging).

A2.325. Associated submits that the "*propensity*" incidents relied upon against Ms Graham do not establish any relevant propensity to use or commission UIG. It submits that her evidence about the purpose for which she used Mr Hanks, and her evidence that she did not ask for or use SSNs, should be accepted.

A2.326. I found Ms Graham to be a credible and honest witness. She gave her evidence in a direct manner and, where she did not have an independent recollection of detail, she did not seek to fill gaps by confident reconstruction. Instead, she repeatedly identified the limits of her memory (including by reference to the passage of time and the effects of her cancer treatment) and explained when she was relying on contemporaneous materials (diary planners, retained files and emails) to refresh her recollection.

A2.327. In relation to Dan Hanks and the materials containing SSNs or other sensitive identifiers, Ms Graham's evidence was that she used him primarily to obtain telephone numbers and addresses for journalistic enquiry, that she did not ask for SSNs and did

not use them, and that her purpose in disclosing examples from her files was to comply with the litigation exercise rather than because she regarded such information as useful or "*valuable*" to her reporting. Those denials were pressed firmly in cross-examination, but she maintained a consistent position. I accept her evidence.

A2.328. In relation to the article-specific challenges raised against her, I record here only my general impression that Ms Graham was doing her best to answer the questions she was asked and did not appear to be inventing explanations to meet points as they arose. The extent to which her evidence is accepted in relation to the individual articles is addressed in the main judgment.

A2.329. Accordingly, I found Ms Graham a witness whose evidence was generally reliable and given honestly. The weight to be attached to her evidence, and the extent to which it is accepted in relation to the individual articles, is addressed in the article-specific sections of the main judgment.

(36) Nicholas Pryer
(5 March 2026)

A2.330. Nicholas Pryer is now a freelance journalist. He joined the *Mail on Sunday* in 1999, initially as a news reporter, before becoming a features writer and then an Assistant Features Editor, a role he held between 2001 and 2017. Before joining the *Mail on Sunday* he had worked on local newspapers, at the BBC, the *Evening Standard* and, briefly, the *Daily Telegraph*. He was the bylined journalist for Article (11).

A2.331. Mr Pryer explained that, as an Assistant Features Editor, he would generate ideas, commission staff or freelance journalists, and edit or rewrite staff and freelance copy into the required length and house style. His evidence was that, close to deadline, he might be given copy, quotations or other material to write up, often with brief instructions from the Features Editor or Deputy Features Editor. That was the context in which he approached Article (11).

A2.332. Mr Pryer did not have a detailed recollection of Article (11). His evidence was that he had not commissioned it, was not a showbusiness journalist, and had no contacts in the Frost/Law circle. He believed that he had been asked to write up material supplied by a freelance journalist and that he would also have used press cuttings in the ordinary way. He did not know who the freelance journalist's source was or how that source had obtained the information. He denied instructing a private investigator or search agent in relation to the Article and said he had no reason to believe that anyone else at the *Mail on Sunday*, or the freelance journalist, had done so.

A2.333. In cross-examination, Mr Pryer accepted that some material in Article (11), including the suggestion of legal action, a boycott of Soho House and tension between Ms Frost Law and Mr Law, was not to be found in the cuttings shown to him and was the "*nub*" of the story. He also accepted that he could not now identify the freelance journalist or the precise provenance of the quotations and new detail. He was asked in general terms about the Features desk's use of Jonathan Stafford for names, addresses and telephone numbers, but no specific allegation was put to him that he had used Mr Stafford, or any other investigator, in relation to Article (11), nor was any case put that the Article had been obtained by voicemail interception.

A2.334. I found Mr Pryer to be an honest and straightforward witness. He did not seek to elevate the quality of his recollection beyond what it could properly bear. He was careful to distinguish what he actually remembered from what he inferred from ordinary Features desk practice. I accept his evidence as to the scope of his role and, in particular, his denial that he was involved in, or aware of, UIG in relation to Article (11). The detailed findings on whether Article (11) was sourced by unlawful means are set out in the main judgment ([420]-[441]).

(37) Katie Nicholl
(9 March 2026)

A2.335. Katie Nicholl is a journalist who began work at the *Mail on Sunday*, in 2001, as a showbusiness news reporter. In that role she said she worked under Paul Field (then head of the news desk), and later under other heads of the news desk, including Sebastian Hamilton and David Dillon. She was appointed Diary Editor, in 2004, and later became Royal Editor (she could not recall the exact date), and she said she continued diary and royal work in conjunction. She went freelance, in 2012, but continued to write for Associated titles thereafter.

A2.336. Ms Nicholl is another key witness because she is bylined on a substantial number of Articles across multiple claims. The Claimants submit that her credibility and propensity are "*of huge importance*" because (on their case) she is bylined on eighteen pleaded Articles in relation to the claims of four Claimants. Associated does not accept the Claimants' characterisation of her evidence or the inferences they seek to draw from it, but it accepts that she is a central witness on the Articles attributed to her.

A2.337. In her two witness statements, Ms Nicholl sought to explain her general working practices and then, where she could, the sourcing of particular Articles. She described keeping notebooks, working to tight deadlines, cultivating a network of sources (including PRs, friends and associates of those written about, and freelance journalists), and the practice of "*standing up*" stories (including by seeking second sourcing where possible). She was frank that, given the age of the publications, her present recollection of many specific Articles is limited and that she therefore relied on re-reading the Articles, reviewing notebooks and payment records, and describing her usual practice rather than asserting detailed recall where she did not have it.

A2.338. So far as information-gathering is concerned, Ms Nicholl accepted that she did, at times, use search agents and that she commissioned (in particular) Steve Whittamore and (as she put it) "*the Scotts*" (System Searches) to obtain contact details and/or addresses, including ex-directory numbers, for the purpose of putting stories to their subjects. She denied that she ever asked any agent to do anything unlawful, and denied commissioning or using UIG such as phone hacking or voicemail interception. In cross-examination she accepted that the documentary record shows her repeated use of Mr Whittamore for ex-directory numbers and occupancy searches, but maintained that she did not know his methods were unlawful and believed he had access to databases not available in-house.

A2.339. Ms Nicholl also addressed the significance of payment records. She explained that payments to sources or freelancers were made through formal internal systems; she accepted that payments at particular levels were consistent with the "*going rate*"

for diary leads; and she maintained that the existence, frequency or size of payments did not, of itself, demonstrate unlawful methods. In her second witness statement, she provided further detail about newsroom processes and, in particular, sought to explain how records might be created or processed within the system (including in her name) without necessarily implying that she personally commissioned unlawful activity or knew of it.

A2.340. In cross-examination, the Claimants tested Ms Nicholl on (among other matters) whether the specificity of certain details in her Articles could plausibly be explained by the sourcing routes she described; whether her explanations for particular "*insider*" details were speculative; the extent to which contemporaneous notebooks did (or did not) record attribution; and whether the documentary record of agent usage and payments supported an inference of UIG. She resisted allegations of voicemail interception, put to her for the first time in the witness box, and denied that her "*modus operandi*" involved unlawful methods, maintaining that she relied on "*real people*" as sources.

A2.341. One specific aspect of the cross-examination concerned the hearsay evidence of Greg Miskiw (see [A2.563]-[A2.566]). In cross-examination, Ms Nicholl was taken to the payment record showing that Mr Miskiw had been paid for "*Help with Chelsy Davy story*", a story associated with her. She accepted the authenticity of that payment record, and accepted that she knew that Mr Miskiw had worked at the *News of the World*. It was then put to her that she had met Mr Miskiw; that his affidavit asserted that he had met her; that he was using "*special contacts and methods*" to obtain stories; that he was involved in voicemail interception in the early 2000s; and that he had told her as much. Ms Nicholl denied those suggestions. She said that she did not recall meeting Mr Miskiw, denied knowing that he was using unlawful methods or voicemail interception, and rejected the suggestion that he had told her this when he met her.

A2.342. It is, however, also material to note the limits of what was put to Ms Nicholl in relation to Mr Miskiw. Although the core allegations in Mr Miskiw's affidavit – namely, that he used Glenn Mulcaire for "*dark arts*", that the *Mail on Sunday* was one of his outlets, and that he had dealings with Mr Anderson and Ms Nicholl – were put in substance, the specific list of targets identified by him in his affidavit (including Kate Moss, Sadie Frost, Jude Law, Sienna Miller, Heather Mills and Chelsy Davy) was not put to Ms Nicholl as a list of persons said to have been hacked by Mr Mulcaire and then used as the basis of stories supplied by Mr Miskiw. Nor was there detailed cross-examination directed to the alleged recruitment conversation in which Mr Miskiw said that he spoke to her of "*special contacts*" at the *News of the World*. Rather, the point was put more generally in the form that he had met her and told her that he was using special contacts or unlawful methods. Mr Miskiw's affidavit therefore remained untested hearsay, albeit that the essential allegations against Ms Nicholl were put to her and denied.

A2.343. Against that evidential background, the parties' closing submissions take materially different positions on the reliability of Ms Nicholl as a witness, the significance of the documentary record, and the inferences that may properly be drawn from gaps in recollection and documentation.

A2.344. The Claimants submit that Ms Nicholl was not a reliable or credible witness, and that her explanations for the provenance of information in her Articles were "*vague,*

evasive and implausible". They contend that she maintained steadfast denials of UIG and downplayed her resort to private investigators/search agents, but that this stance is contradicted by contemporaneous documents (including payment records and notebooks) which, they submit, show her commissioning known agents (including Mr Whittamore and ELI/TDI) and obtaining ex-directory numbers and other private information. They submit that the frequency of such commissioning, and the sums involved, are inconsistent with her evidence that instructions were only for "*publicly available*" information; that she shifted explanations as to sources; and that she was implausibly ignorant of the practices of senior colleagues or the context surrounding agents she used. They also submit that she repeatedly resorted to lack of recall and to a limited set of phrases which they characterise as rehearsed.

A2.345. The Claimants therefore submit that the Court should not rely on Ms Nicholl's evidence on contested factual issues unless independently corroborated by contemporaneous documents or other reliable evidence. They invite the Court to draw adverse inferences where her explanations are vague, unsupported or inconsistent with the documentary record, and to infer – where those conditions are satisfied – that the true explanation is that she knowingly commissioned, or was recklessly indifferent to the commissioning of, UIG.

A2.346. Associated submits that the Claimants' attacks on Ms Nicholl are unfair and overbroad. It submits that she was open about using private investigators/search agents at times, principally (on her evidence) Mr Whittamore and System Searches, and that her evidence was that such use was for contact information to put stories to subjects. Associated submits that it is unsurprising that a witness cannot recall precisely, decades later, the number of occasions on which an agent was used; that Ms Nicholl was entitled to be cautious about ambiguous records, including where payments might be processed through newsroom systems and recorded in her name; and that the Claimants' attempt to infer illegality from the use of agents for ex-directory numbers is not justified. It submits that her candour about what she cannot remember strengthens rather than undermines her reliability, and that the absence of attribution in notebooks is not inherently suspicious given contemporaneous newsroom practice and source protection.

A2.347. Associated therefore invites the Court to accept Ms Nicholl's evidence unless there is clear and specific contrary evidence, and to approach with caution the inferences advanced by the Claimants based on proximity, ambiguity in records, or the absence of detailed recollection. It submits that the Claimants have not shown that she knew, or must have known, that information was unlawfully obtained, nor that she deliberately "*closed her eyes*" to such a risk; and it invites the Court not to treat generalised criticism of her credibility as proof of wrongdoing in relation to any specific Article.

A2.348. I found Ms Nicholl to be a credible and impressive witness, and I accept her evidence as honest. Her frank acceptance of the limits of her recollection did not undermine that assessment. However, the weight to be attached to her evidence on any particular sourcing issue must still be judged by reference to the degree of specific recollection she was able to give and the documentary record. That includes the need to distinguish between tested oral evidence and untested hearsay. In particular, although the substance of Mr Miskiw's allegation – that he had dealings with Ms Nicholl and used unlawful "*special contacts and methods*" – was put to her in cross-examination and

denied, his affidavit remained untested hearsay. On that issue, I prefer Ms Nicholl's tested oral evidence to the untested hearsay evidence of Mr Miskiw.

A2.349. As with other journalists, the proper approach to Ms Nicholl's evidence, in light of these competing submissions, is to assess (a) what she can say reliably and specifically about sourcing for each Article, (b) what is corroborated (or undermined) by the documentary record, and (c) what weight (if any) can fairly be attached to inferences invited by either party where evidence is incomplete given the age of the publications.

(38) Charlotte Griffiths
(10 March 2026)

A2.350. Charlotte Griffiths is a journalist employed by Associated. She joined Associated in June 2008 on the trainee journalist scheme and thereafter joined the *Mail on Sunday* Diary team as a diary reporter, working for Katie Nicholl and her deputy. She became Diary Editor, in 2013, and Editor at Large, in 2020.

A2.351. Ms Griffiths' evidence was relevant in three principal respects. First, she gave evidence about the way in which the *Mail on Sunday* Diary column was compiled, including the use of team contributions, freelancers, PR/event tip-offs, "*leftovers*" and stories passed in from the News Desk. Secondly, she was involved in Articles (52) and (54), although not bylined on them, and was bylined on Article (57). Thirdly, the Claimants relied upon a Schedule C article concerning Tom Hardy and Charlotte Riley as alleged propensity evidence against her.

A2.352. Ms Griffiths described the Diary as a fast-moving team operation producing a large number of short items each week. She accepted that, many years later, she could not always recall who had written a particular item or how a particular line or "*nugget*" had been sourced. Where she could not remember, she was careful to say so and to distinguish between actual recollection, reconstruction from documents, and what she understood to be ordinary Diary practice.

A2.353. Ms Griffiths denied ever using a private investigator or search agent, and denied phone hacking, phone tapping, voicemail interception or hospital blagging. In relation to the Articles with which she was concerned, the detailed findings are set out in the main judgment for the relevant Articles. For present purposes, I record that I accept that her inability, at this distance, to identify the precise provenance of every item of Diary material is not, without more, evidence of UIG.

A2.354. The Claimants also relied on the *Mail on Sunday* article, published on 22 July 2018, concerning Tom Hardy and Charlotte Riley, and the involvement of Christine Hart, as supporting an alleged propensity on the part of Ms Griffiths to use UIG. I reject that submission. There is no allegation or evidence that Ms Griffiths used Ms Hart in connection with any of the Articles relied upon by the Claimants. In any event, I accept Ms Griffiths' evidence that she had not heard of Ms Hart before this case and did not know, or have reason to suspect, that any information offered by her had been obtained by false pretences or other unlawful means. The contemporaneous documents show that the story came to the Diary desk as an unsolicited tip, that Ms Hart presented herself as associated with a news agency and as having a personal source, and that the Diary team then took steps to test and stand up the story. That episode does not support any relevant propensity case against Ms Griffiths.

A2.355. A separate challenge was made to Ms Griffiths' evidence about her social contacts, including the erroneous reference in her witness statement to having met Prince Harry "*in Ibiza*". She accepted that the Ibiza reference was wrong and explained it as a drafting error. I do not regard that error as demonstrating dishonesty or any attempt deliberately to overstate her connection with Prince Harry or his circle.

A2.356. Overall, I found Ms Griffiths to be an impressive witness. She was frank about the limits of her recollection and did not attempt to manufacture certainty where she had none. Her answers in cross-examination distinguished clearly between what she remembered, what she could infer from documents, and what she could only explain by reference to usual practice. I accept her evidence as honest. The proper approach to her evidence is to assess, article by article, what she can say reliably and specifically about sourcing, what is corroborated or undermined by the contemporaneous record, and whether any inference of UIG is fairly supported by the evidence. It is not permissible to treat absence of present recollection, or absence of a complete documentary trail, as a substitute for proof of UIG.

(39) Alison Boshoff
(10 March 2026)

A2.357. Alison Boshoff is a journalist employed by Associated. She is currently Editor at Large and a Friday columnist at the *Daily Mail*. She first worked for the *Daily Mail* in the mid-1990s, later worked at *The Sun* and the *Daily Telegraph*, and returned to the *Daily Mail*, as Showbiz Editor, in December 1998. From May 2002 she worked as a freelancer, exclusively for the *Daily Mail*, before later holding senior showbusiness roles. She was the bylined author of Article (17).

A2.358. Ms Boshoff had no actual recollection of writing Article (17). That was unsurprising given the passage of time and the volume of articles she had written. Her evidence was therefore directed principally to her ordinary working practice at the time. She explained that, as a freelance features writer, she would commonly be commissioned to produce a contextual feature expanding on a story already in circulation, using cuttings, calls to contacts, and, where appropriate, publicists, lawyers or confidential sources.

A2.359. In relation to Article (17), Ms Boshoff accepted in cross-examination that not all of the material could be traced directly to the cuttings put to her, and that her witness statement suggestion that it was "*absolutely possible*" that the Article was based entirely on cuttings could not be maintained in this case. She maintained, however, that the Article was in the same general territory as existing reporting and that, to the best of her recollection, any additional material would have come from ordinary journalistic enquiry, including a confidential source of the kind she identified in her witness statement.

A2.360. Ms Boshoff was also cross-examined about historic dealings with third parties, including Steve Whittamore, Christine Hart and Jonathan Stafford. She accepted some historic dealings with Hart and Stafford, but denied using any of them, or any other private investigator or search agent, in relation to Article (17). The detailed findings on those matters, and on the Article-specific allegation of UIG, are set out in the main judgment (see [548]-[569]).

A2.361. I found Ms Boshoff to be a straightforward and candid witness. She was careful to distinguish between matters she actually remembered and matters she was reconstructing from usual practice. Where propositions in her witness statement required qualification, she accepted that without evasion. Her lack of recollection of events more than 20 years ago did not suggest evasiveness. Nor did I regard her denial of serious wrongdoing as formulaic or contrived. I accept her evidence as honest, including her denial that she used any private investigator, search agent, pretext call or voicemail interception in relation to Article (17).

(40) David Dillon
(10 March 2026)

A2.362. David Dillon is a journalist and is currently the Editor of the *Mail on Sunday*. He is 59 years old. He began working in the newspaper industry as a teenager (as a messenger for a sports reporting agency) and later studied Politics at Liverpool University. His early career included work on a local newspaper in Liverpool, work for a press agency covering football matches and elections, and later work in London for London News Service with night and weekend shifts for *The Sun* and the *Sunday Mirror*. He worked in the mid-1990s as a reporter at the *Sunday Mirror*, then moved to the *Sunday Express* (reporter, then Chief Reporter and News Editor). In August 2001, he joined the *Mail on Sunday* as Deputy News Editor under Paul Field (then Sebastian Hamilton) during Peter Wright's editorship, later becoming News Editor (September 2007), Assistant Editor (News) (2013), Executive Editor (2016), Deputy Editor (2019), and Editor (2021).

A2.363. Mr Dillon gave two witness statements. In his first, he set out (i) his account of how the *Mail on Sunday* News Desk operated during the relevant period; (ii) his evidence about the use (historically) of search agents and the later ban; and (iii) his evidence addressing a number of pleaded articles and the Claimants' wider allegations about UIG, including allegations relating to Glenn Mulcaire, Steve Whittamore, Christine Hart and others. In his second statement, he addressed in particular the Claimants' allegation that certain payment records to John Ross represented unlawful payments to police officers for information.

A2.364. Mr Dillon's evidence is relevant to issues the Court must determine for two principal reasons. First, it bears on what the Claimants allege was the institutional practice and culture of the *Mail on Sunday* News Desk in the early 2000s, including the use of third-party "*search agents*" for contact details and similar information, and how such services were understood at the time. Secondly, it bears on the Claimants' allegations that unlawful methods (including blagging, and payments to corrupt police officers) were used in connection with particular stories and/or more generally, including the significance and weight to be attached to historic dealings with particular third parties such as Mr Whittamore.

A2.365. In his evidence, Mr Dillon described the distinctive operation of a Sunday newspaper, emphasising that the ambition is to publish something "*new and fresh*" that sets the agenda for the week. He described the News Desk as a team operation involving daily (Tuesday–Saturday) news conferences, "*pre-conference*" meetings with the Editor, and continual scrutiny of stories as they developed. He stated that a significant part of his role (as News Editor and later) involved testing stories: how information was

known, what checks had been done, and whether a right of reply had been sought, with legal input where needed.

A2.366. He also explained the editorial separation between the *Mail on Sunday* and the *Daily Mail*, describing them as rivals and stating that precautions were taken to prevent leakage of "*special*" exclusives. He said he could not remember ever having passed a story to the *Daily Mail* and that, if it happened, he was not aware of it.

A2.367. Under the heading "*unlawful information gathering*", Mr Dillon in his witness statement denied phone hacking and phone tapping, stating that in over twenty-five years at the *Mail on Sunday* he had never known of anyone hacking or tapping a phone, and had never been asked to do so (nor asked anyone else to do so) or done it himself. He stated that he only became aware of the concept when the *News of the World* scandal broke and later learned he had been a victim of hacking himself.

A2.368. As to "*blagging*", Mr Dillon accepted that, in his early years at the *Mail on Sunday*, from 2001, journalists (including him) sometimes used "*search agents*" to obtain information quickly, including addresses, ex-directory numbers, "*friends and family lists*", and to "*spin*" phone numbers or vehicle registrations (i.e. obtaining a phone number from an address, an address from a phone number, or a name/address from a vehicle registration). He said he did not understand "*friends and family*" as a particular BT service at the time, and described the historical context in which such services were viewed as a "*shortcut*" to contact information in the competitive environment of doorstep journalism.

A2.369. He said it was only after his interview by police, in 2004 (Operation Glade), that he learned that certain methods used by Mr Whittamore were unlawful, which came as a surprise to him; he described privacy and data protection law as not being "*on [his] radar*" at that time. He stated that it was after the ICO's later investigation that John Wellington instructed that search agents should be banned across Associated's titles.

A2.370. Mr Dillon addressed the Claimants' allegations about Glenn Mulcaire, stating that he had never met him, spoken to him or had anything to do with him; he denied ever seeing a "*menu*" of illegal services and said he had never heard of Nine Consultancy.

A2.371. He described Christine Hart as a "*hybrid journalist and investigator*" who pitched herself in those terms and assisted reporters in investigating stories, but said he could not recall any specific instance of working with her or asking her to obtain information, and that he first learned of the allegation that a particular 2018 story was based on a tip from her when informed of the allegations in these proceedings.

A2.372. His evidence concerning Steve Whittamore was more specific. He stated that he remembered instructing Mr Whittamore in the early days of his career at the *Mail on Sunday*, and that Mr Whittamore was widely known on Fleet Street as someone who could provide addresses and ex-directory numbers. He said that the News Desk also requested vehicle registration checks, and possibly (as he recalled) enquiries about whether a person had a criminal conviction (though he did not know how such information would have been obtained). He stated that it did not occur to him at the time that someone so widely used would be operating illegally.

A2.373. He explained that he believed vehicle registration information was obtained lawfully (from a DVLA database), and that it was only during the 2004 police interview that he learned Mr Whittamore had obtained names of vehicle owners from the Police National Computer and that a police officer was being investigated for assisting him.

A2.374. Mr Dillon also addressed an Atex contact list (filed within an editing folder) that contained various entries including "*private investigators/private eyes*". He stated it was not his personal contacts list, that he did not recognise several names, and that he believed it was likely a shared News Desk contacts list which any journalist could access or add to. He said he did not recognise an entry for "*Gavin*", did not believe he made it, and denied any involvement with Gavin Burrows, whom he said he had not even heard of before the allegations in these claims were made.

A2.375. Mr Dillon described being interviewed by police, in January 2004, in relation to Operation Glade. He recalled attending a police station in North London with a lawyer and being questioned about the *Mail on Sunday*'s use of Mr Whittamore, in particular a story about Bob Crow (then a union leader) being transported to work on a moped, and also a vehicle registration check relating to a vehicle whose registered keeper was Emma Beal (partner of Ken Livingstone). He said that, at the time, he had no clear memory whether he had personally asked for the checks; and he suggested that his name appearing on invoices or a ledger could reflect direct contact, but could also reflect Mr Whittamore using his name because he was the news editor dealing with the story.

A2.376. Mr Dillon gave a general account of how the Bob Crow story may have come together: he thought there was likely a freelancer/photographer observing Mr Crow, and that the newspaper then wanted to identify the owner of the scooter using a registration check. He expressed the view that the public interest lay in reporting that commuters faced disruption while the union leader did not. He said receiving a later police letter confirming no further action was taken brought relief, and that the experience caused him to be more cautious about the legality of registration checks and use of search agents thereafter.

A2.377. In his second witness statement, Mr Dillon addressed three pleaded "*payment to John Ross*" entries relied upon by the Claimants to infer unlawful payments to police officers for information. He stated that the Claimants' allegation was that Associated made payments to Mr Ross on the same day as, or following, publication of three articles, and that this supported an inference of unlawful payments to police for information. He said he did not have a familiar memory of Mr Ross beyond his being a journalistic "*police contact*" providing crime-related information and (as he put it) "*copy*" for stories.

A2.378. He stated he had no recollection of the specific 2011 "*Redford*" story or the 2010 "*Knifewoman terrorises Jemima*" story; and he said it was not unusual for police officers to speak to journalists and for the newspaper to pay someone for information. He suggested that Mr Ross may have been the source of a story, though he could not say with certainty. He also dealt with an article in 2013 ("*PC sold fake goods*") where, reviewing a payment record to Mr Ross, he said it appeared (as with the story) that a police officer may have been the source, checked with Kent Police.

A2.379. In cross-examination, over two days, Mr Sherborne tested Mr Dillon's account of historic newsroom practice and his evidence about TPIs, focusing in particular on Steve Whittamore and the Operation Glade police interview. Mr Dillon was taken to the pre-disclosure material sent by the Metropolitan Police to Eddie Young in relation to his interview, which described the investigation as concerning unlawful access to Police National Computer data (registered keeper details and criminal record histories), and stated that it was believed journalists had been paying Mr Whittamore to unlawfully obtain private information, with invoices recovered evidencing payments. Mr Dillon said he could not recall being told at the time about the wider extent of the investigation. He was then shown the relevant invoice and asked whether he was the person who commissioned the searches recorded against his name. His evidence was that, given the passage of time, he could not give a precise answer as to whether he personally made the request or whether a reporter made it and his name appeared because he was the desk editor dealing with the story. He was also taken to the note of the 2011 interview with Mr Young, and, when confronted with the suggestion in that note that the moped driver might have been identified by "*house enquiries*", he accepted that this was not the route by which the moped driver was identified: the identification was made through the request to Mr Whittamore.

A2.380. Mr Dillon was also pressed on the Emma Beal/congestion charge item. He accepted that the vehicle registration detail in the story corresponded with the registration recorded on the invoice, but said he had no recollection of being involved in the story or what the registration enquiry was intended to achieve. He accepted that the enquiry "*may well*" have been for story purposes rather than for the purpose of fronting the subject for comment, but repeatedly emphasised that it was a minor story and that he could not recall the "*minute detail*" of how it was put together.

A2.381. The cross-examination then turned to other enquiry agents, in particular Jonathan Stafford. Mr Dillon accepted that the *Mail on Sunday* used Mr Stafford regularly. When it was put to him that Mr Stafford was a "*blagger*", Mr Dillon agreed that, in ordinary language, he could be called a blagger and that he "*did do that kind of thing*", and he accepted he had used him on occasion. He was taken to invoices addressed to him and asked about the absence of the schedules that would ordinarily identify the underlying tasks; he said he did not know what had happened to them. He was also shown examples of schedules (from other contexts) said to include itemised phone bills and other forms of "*phone information*". He said he had no clear memory of the format but accepted that the documents appeared to indicate such work being done.

A2.382. Mr Dillon was taken back to the Atex/News Desk contact list and reiterated that it was a shared electronic list which he did not really use (preferring his own contacts), but which others could add to. He accepted that entries included Christine Hart described as a "*private eye*" and "*Lloyd Hart at TDI*". He accepted a vague recollection of ELI providing services to journalists, but rejected the proposition that ELI provided medical information or bank account details (while accepting it "*could be the case*" that some of the other categories suggested were provided). He rejected any suggestion that he knew Gavin Burrows (or "*Gavin Rhodes*") or that Mr Burrows provided Mr Henderson with information obtained through voicemail interception or similar unlawful interception activities.

A2.383. A substantial part of the second day of cross-examination concerned the Claimants' "*news desk*" thesis: that where journalists said they received information "*from the news desk*", senior desk executives must have been involved and must have known (on the Claimants' case) of unlawful methods used to obtain the information. Mr Dillon rejected that proposition and explained that "*information from the news desk*" could describe a wide range of routes (including members of the public, readers, PR representatives, agents, and freelance journalists), and that the function of the desk was then to pass the information to reporters to check whether it was true and publishable. He accepted that standing up and verification were required, but said that he would not have been involved in every such process and that it was impossible, given the passage of time and volume of stories, to say whether he had been involved in particular items. He accepted, when pressed, that he was speculating as to how certain stories might have been obtained where he had no recollection.

A2.384. Within that broader theme, Mr Dillon was questioned in detail about Article (25) and an email chain suggesting attempts to identify the girlfriend via a British Airways contact (see main judgment [754(3)]). Mr Dillon pointed out he was not copied into that email and denied that Ms Graham told him the name was obtained in that way. He accepted that the email showed attempts to find the correct name and that there was reference to someone "*trying British Airways*" in Buenos Aires, but he denied that he understood this to mean (still less that he "*knew perfectly well*" it meant) paying an airline employee to check "*the system*".

A2.385. Mr Dillon was also pressed on Article (53) and contemporaneous emails about paying sources and attempting to identify the surrogate mother. He accepted that there would have been interest in identifying the surrogate mother and accepted that the proposed figures for payments "*probably*" would have been discussed with him, but he rejected the proposition that, in his role, he would have known of unlawful methods being used to obtain the information.

A2.386. Further lines of cross-examination concerned (i) a list correlating payments to Lee Harpin with Katie Nicholl stories, which Mr Dillon said he did not recognise and about which he said he only learned during these proceedings; (ii) payments approved by him to Greg Miskiw, which he characterised as modest sums that would be approved without "*further thought*" in a busy administrative process, and he denied knowing at the time of any close association between Mr Miskiw and Mr Mulcaire; and (iii) the "*John Ross*" material, where Mr Dillon said his evidence was necessarily speculative, based on being shown minor articles and describing ordinary processes (including putting crime stories to the press office), and he said he did not deal with Mr Ross, had no recollection of seeing the payment list in 2011, and did not know that Mr Ross featured in evidence at the Leveson Inquiry.

A2.387. To the extent that, in cross-examination, Mr Dillon was invited to comment on incidents or materials with which he had no involvement and no contemporaneous familiarity, I do not treat that commentary as evidence of the underlying facts. My findings are based on the primary evidence of those with relevant knowledge and on contemporaneous documents, evaluated in the round.

A2.388. The parties' closing submissions take materially different positions on what should be made of this evidence. The Claimants rely on Mr Dillon as an example of senior newsroom involvement in, and approval of, the use of TPIs, emphasising (i) his

acceptance that the *Mail on Sunday* used Mr Whittamore (including in connection with vehicle registration checks investigated by Operation Glade) and that Mr Stafford could properly be called a "*blagger*"; (ii) their submission that his account – of not appreciating, at the time, the unlawfulness of methods used – was implausible and reflected an "*incuriosity*" that the Court should not accept; and (iii) their submission (advanced through the cross-examination) that he was avoiding the obvious inference to be drawn from certain contemporaneous documents, including in the British Airways email chain, and that adverse inferences should be drawn accordingly. Associated, by contrast, submits that the cross-examination of Mr Dillon was largely irrelevant to the pleaded issues because he is not a relevant pleaded journalist for any pleaded Schedule B article, and that (critically) no allegation was put that he was personally involved in directing or commissioning UIG in connection with any particular pleaded article relied upon by the Claimants. Associated submits that the "*knew illegality*" case lacked an evidential foundation, that Mr Dillon's denials should be accepted, and that the remaining pleaded "*propensity*" points were not seriously pursued at trial; it also submits that certain allegations (including the "*menu of illegal services*" allegation) were not put in cross-examination and should be dismissed.

A2.389. As to "*police payments*", the Claimants submit that payments to John Ross, contemporaneous with publication, support an inference that unlawful payments to police were being made for information. They rely upon the timing of those payments and the nature of the stories in question to support the inference that the information was not obtained by straightforward lawful reporting, and that the Court should not accept a benign characterisation of such payments without close scrutiny.

A2.390. Associated's closing submissions, by contrast, submit that the Claimants' attack on Mr Dillon rests on a conflation between (a) the acknowledged historic use of search agents for certain tasks and (b) a finding that, in a particular instance, unlawful methods were used with knowledge of their unlawfulness. In relation to Mr Dillon specifically, Associated points to his evidence that he only learned in 2004 (via the police interview) that the Police National Computer had been used, and to the limited and general nature of the cross-examination as to knowledge, submitting that the Claimants did not properly put (or prove) the requisite case that he commissioned unlawful acquisition with knowledge of unlawfulness.

A2.391. In the section of its written submissions dealing with the remnants of the "*propensity case*", Associated submits that the Claimants did not seriously pursue at trial the pleaded allegations sought to be linked to Mr Dillon, including the suggestion that he commissioned Mr Whittamore in the relevant incidents knowing he would obtain information unlawfully; and it submits that the "*rolled-up*" or generalised way in which points were put does not provide a proper basis for inviting findings against him. It also notes that certain allegations (for example relating to a "*menu*" of illegal services) were not challenged in cross-examination and should be dismissed.

A2.392. I found Mr Dillon to be a clearly honest and truthful witness. In cross-examination he did not seek to minimise the historic reality that the *Mail on Sunday* News Desk made use, at least in the early 2000s, of TPIs for "*search*" tasks, and he was prepared to make candid admissions about what such agents did. Thus, when it was put to him that Jonathan Stafford was a "*blagger*", he accepted (in substance) that he "*did do that kind of thing*" and that he (Mr Dillon) had used him on occasion.

A2.393. He also accepted that some activities of TPIs might, viewed now, appear *prima facie* unlawful. What matters, however, is the temporal perspective: those assessments are made now, with the benefit of hindsight and against a very different modern understanding of privacy and data protection and the actions of TPIs. I reject the Claimants' broad characterisation of Mr Dillon as a man who "*knew very well*" that TPIs such as Whittamore were engaged in UIG and nevertheless went along with it.

A2.394. The more nuanced – and, on the evidence, more accurate – picture is that, like many journalists at the time, little real attention was paid to the precise methods by which TPIs obtained information, and Mr Dillon's evidence was that he only came to understand the unlawfulness of some methods (in particular, in relation to vehicle registration checks) when interviewed by the police in 2004. That does not mean that the practices were beyond criticism: it may be that Mr Dillon (and others) can fairly be criticised for not applying a more rigorous scrutiny to how information was being obtained. But the Claimants did not, in terms, contend that Mr Dillon was dishonest in his evidence; rather, their case was that he "*must have known*" (or, in one passage, that he "*obfuscated*" when pressed on an aspect of sourcing), and they invited the Court to draw inferences accordingly.

A2.395. I accept that Mr Dillon made frank admissions about "*blagging*" as a journalistic technique and that he regarded it, in appropriate circumstances and where justified, as capable of being legitimate – an account consistent with his evidence about historic newsroom practice and the later tightening of standards. But that, in my judgment, underlines the danger of generalisation. Blagging (or any other form of subterfuge) is capable of being justified in journalism by the public interest. Whether it is justified in any particular circumstances is not resolved by broad labels, but by a careful analysis of the facts of the particular case, including what was done, why it was done, and whether (on the evidence) it was justified

A2.396. Drawing these matters together, I accept Mr Dillon as a reliable and truthful witness on the central issues to which his evidence was directed. His oral evidence was consistent with his witness statements in its essential features: he acknowledged the historic use of search agents on the News Desk, made sensible concessions where documents demonstrated that point, and was careful to distinguish between what he could positively recall and what he could only explain by reference to the newsroom practice of the time.

A2.397. Importantly, he did not seek to evade uncomfortable propositions when they were squarely put: his acceptance that certain practices (including blagging) occurred, and his willingness to address them candidly, reinforced (rather than undermined) the overall impression of straightforward honesty.

A2.398. I therefore reject the Claimants' attempt to treat his evidence as establishing a generalised state of knowing complicity in UIG. Their case is, at its highest, that he "*must have known*" and that inferences should be drawn; but they do not advance a case that he was an untruthful witness in the ordinary sense, and I do not find that his evidence in cross-examination justifies such a conclusion. The appropriate use of his evidence is accordingly this: it provides helpful context for how the News Desk worked and how third-party assistance was understood and used at the time, but it cannot be treated as a substitute for article-specific proof of unlawful method or

knowledge; those questions must be resolved, where they arise, by reference to the totality of the evidence on the particular publication or incident.

(41) Andrew Buckwell
(11 March 2026)

A2.399. Andrew Buckwell is a media professional who works as a freelance journalist and occasionally in public relations. He worked as a journalist for the *Sunday Mirror* between 1998 and 2002 and went freelance in 2002, after which he did freelance work for the *Mail on Sunday* with the News Desk, including with Paul Field, David Dillon and Dominic Turnbull. He became a director of London Media Press Ltd in 2002 and ceased to be a director in 2016. He continues to do freelance work for Associated titles.

A2.400. Mr Buckwell provided two witness statements. The first addressed the *Mail on Sunday* article on which he is bylined in these proceedings (Article (16) – see main judgment [527]-[547]). The second addressed later-pleaded allegations relating to his work at the *Sunday Mirror* in 1998–1999, which the Claimants rely upon as propensity material.

A2.401. The Claimants' pleaded propensity case against Mr Buckwell concerns alleged commissioning by him, while at the *Sunday Mirror* in 1998–1999, of (i) Christine Hart to obtain private medical information, and (ii) Jonathan Stafford to obtain, among other things, utility company information, itemised phone billing data, and flight information. Mr Buckwell's second statement accepted that he remembered Ms Hart and Mr Stafford as people used at that title to "*find people*" (addresses and contact details), but he denied asking either to do anything unlawful and said he had no recollection of the specific incidents alleged. He emphasised the absence of contemporaneous materials and the age of the events.

A2.402. In cross-examination, Mr Buckwell accepted that he had spoken to and used Ms Hart for assistance on stories in the past, but denied doing so in relation to Article (16). It was then put to him that Ms Hart did far more than locate addresses, including obtaining information through "*subterfuge*" and obtaining private medical information. Mr Buckwell said he had not asked her to do anything illegal and was not aware that she did anything illegal, though he accepted that she "*may have*" obtained medical information.

A2.403. Mr Buckwell was taken to an invoice from Ms Hart to the *Sunday Mirror* News Desk, dated 1 October 1998, recording, against his name, "*Full M*" enquiries relating to Timothy Taylor and Des Lynam. He accepted that his name appeared against those entries but said that did not necessarily mean he instructed Ms Hart. He said he did not recall instructing her and suggested it might be tagged to him because he was bylined on a story thought to relate to the invoice.

A2.404. He was then taken to his bylined *Sunday Mirror* article about Mr Taylor, which included detail about Mr Taylor's illness and treatment. He accepted that the article contained medical information but maintained he had no recollection of asking Ms Hart to obtain it, explaining in substance that the story came to him with photographs from a photographer and that the colour and quote material could have

been obtained from the photographer and from an approach to a press office for comment.

A2.405. Mr Buckwell was also taken to another Ms Hart invoice for the week ending 26 January 1999, recording multiple enquiries and including the entry "*Sloan Hos*". Mr Buckwell accepted he could see his name on the document but said he had no recollection of the stories or what the entries related to. At that point, the Claimants sought permission to deploy an additional document said to be a short article by Mr Buckwell which would "*tie up*" the "*Sloan Hos*" entry by showing that it related to medical information from Sloan Hospital. Associated objected on fairness grounds, including the timing and the inability to investigate the circumstances of publication at a different publisher. I ruled that the document could not be used in cross-examination, emphasising that late reliance on undisclosed documents had to meet strict fairness requirements; that the fairness concern was acute because it was not an Associated publication; and that it would be unfair to ambush a witness with a serious allegation based on an article shown to him for the first time in the witness box. I therefore refused permission to cross-examine further on that document.

A2.406. Mr Buckwell was then questioned about Jonathan Stafford. He accepted he spoke to Mr Stafford on occasions and used him for addresses and phone numbers, but said he did not know how he obtained information and did not think of him as a "*blagger*". He said he presumed Mr Stafford was a legitimate "*tool*" available in the newsroom. He was then taken to surviving schedules accompanying Mr Stafford's invoices at the *Sunday Mirror*. These included entries described as "*Tele item*" (put to him as itemised call data), "*Meter + telephone itemisation*", and "*airline checks*". Mr Buckwell repeatedly said he did not recall commissioning those tasks and said he had never seen the schedules before these proceedings. He said that itemised lists of numbers would have been of no use to him, and he expressed uncertainty as to what particular abbreviations meant.

A2.407. During the questioning on Mr Stafford, the Claimants again sought permission to deploy further late-identified articles, said to relate to "*easyJet billing information*" and the airline checks on one of the schedules. Associated objected again on fairness grounds. I declined to permit cross-examination on those further articles, observing that these were propensity allegations and that the exception permitting propensity material was narrow, not least because it was not Associated's responsibility what took place at other newspapers. I held that the Claimants were entitled to rely on the existing schedule material to make their legitimate points about repeated instruction of Mr Stafford, but refused permission to cross-examine on the late-produced articles.

A2.408. On the evidence, I am satisfied that Mr Buckwell has a demonstrated propensity, during his period at the *Sunday Mirror*, to use (and to have commissioned) certain forms of UIG, including the obtaining of private medical information and the procurement of telephone-related information of a kind not readily explicable as lawful "*contact finding*". The documentary material put to him in cross-examination included a Christine Hart invoice recording, against his name, "*Full M*" enquiries in relation to Timothy Taylor and Des Lynam, and surviving Jonathan Stafford schedules containing entries such as "*Tele item*", "*Meter + telephone itemisation*" and "*airline checks*". Although Mr Buckwell sought to distance himself from the more obviously intrusive character of that material – saying he did not recall instructing such tasks, that his name might appear because he was bylined on an article, and that he believed

he was using legitimate "*tools*" available in the newsroom – his evidence did not provide a convincing lawful account for why such enquiries were being commissioned repeatedly in his name, still less why items such as itemised billing data and airline checks were being sought. I find that the contemporary documentary material provides a more reliable insight into Mr Buckwell's activities.

A2.409. As a witness, Mr Buckwell was generally measured and straightforward. He did not, in my assessment, seek to evade difficult propositions when they were squarely put to him. He made concessions where appropriate, including as to the limits of his memory and as to the fact that Article (16) contained more than the bare identifying details he said his source had supplied. Where he denied wrongdoing, he did so clearly and without over-elaboration. His evidence about events more than twenty years ago was inevitably affected by the passage of time; but I did not regard him as evasive or dishonest.

A2.410. The article-specific findings in relation to Article (16), including the significance of the propensity material in relation to that Article, are set out in the main judgment (see [527]-[547]).

(42) Heather Briley
(13 March 2026)

A2.411. Heather Briley is a freelance journalist. She was born in December 1961 and moved to Argentina, in 1979, with her parents. She has lived in Argentina permanently for around 38 years and now splits her time between Argentina and the UK. Over the course of her career, she has worked as a freelancer (local "*stringer*") on South American stories, building up a network of local contacts (including photographers and journalists). She first started working with the *Mail on Sunday* around 2004.

A2.412. Ms Briley was a relevant witness because her evidence concerned the sourcing and verification steps taken in Argentina in relation to Prince Harry's pleaded case on Article (25). In particular, her evidence went to the provenance of the identification details of Chelsy Davy (including the spelling of her surname) and the allegation that such information was, or was sought to be, obtained through a British Airways contact in Buenos Aires.

A2.413. In her witness statement, Ms Briley explained that she worked with Caroline Graham on the Argentina story. She described being asked to assist with local enquiries and reporting in circumstances where the story was developing quickly and the practicalities of communication and verification depended on local contacts. She identified local freelancers who assisted and the general route by which information about what was happening at, and around, the polo ranch was obtained and passed on. She also addressed an approach she made to a contact at British Airways in Buenos Aires and explained her evidence as to what, if anything, he did or did not provide by way of information.

A2.414. The article-specific significance of Ms Briley's evidence, and the inferences to be drawn from it, are addressed in the main judgment in relation to Article (25).

A2.415. My assessment of Ms Briley is that she was an honest witness, but in some respects naïve. Her email of 26 November 2004 (see [754(3)] main judgment) is a reliable

glimpse and demonstrates that she was willing to offer money to a British Airways contact "*in return for [the] name*". Had the employee provided the information from any British Airways database or records, then that disclosure would have been prima facie unlawful. In cross-examination, Ms Briley resisted the proposition that she was proposing payment for improper database access and offered various speculative examples of how an airport employee might, in theory, come by information lawfully. It has not been necessary to consider those examples in any detail. Conclusively, I have accepted her evidence that her British Airways contact did not, in fact, provide the information sought (see [772]-[783]).

(43) Barbara Jones
(13 March 2026)

A2.416. Ms Jones's evidence was relevant principally to Article (25) and Article (28). In relation to Article (25), it bore on whether the identification and confirmation material, and certain quotations, could be explained by direct lawful enquiry and doorstepping rather than by unlawful acquisition. In relation to Article (28), it bore on the source route by which especially private details were said to have been obtained and passed to the news desk. The detail of that evidence, and my conclusions upon it, are set out in the main judgment.

A2.417. In cross-examination, Ms Jones was challenged robustly on both Article (25) and Article (28), including on timing, plausibility, whether she had in truth relied on third-party assistance, and more generally whether her methods involved blagging or bribery. She denied emphatically that she had ever "*blagged or bribed*" anyone. A further feature of her cross-examination concerned criticisms of her journalistic methods advanced by Prince Harry in his own evidence, including his suggestion that she knew how to "*work people*" and had probably blagged or bribed local contacts in another context. Those assertions were put to her, and she rejected them in emphatic terms, explaining how the relevant reporting could have been, and on her account was, carried out by lawful means.

A2.418. The parties' submissions on Ms Jones's evidence are summarised in the main judgment so far as Article (25) and Article (28) are concerned. In brief, the Claimants invited the Court to treat aspects of her narrative with caution and to regard parts of it as implausible; Associated submitted that she had provided a coherent and substantially orthodox account of her own role and that there was no basis to reject it.

A2.419. My assessment of Ms Jones is that she was an impressive witness whose evidence I accept. In summary, her account was coherent and credible, and was not impeached in cross-examination. Her evidence as to her own role was, in material respects, consistent with the contemporaneous documentary trail and the other evidence about how the stories were pursued at the time. Her straightforward and direct approach was perhaps best illustrated by her response to the allegation, advanced through Prince Harry's evidence, that she obtained information by "*bribes and blagging*" and had probably blagged local rangers with money. When that strand of evidence was put to her in cross-examination, she rejected it in emphatic terms and gave a detailed, practical explanation of how the relevant reporting could be investigated by lawful means. That exchange reinforced my overall impression of her evidence as reliable.

A2.420. I deal in detail in the main judgment with how Ms Jones' evidence fits with the other evidence when considering Article (25) and Article (28). In summary, however, I accept her evidence.

(44) Sanchez Manning
(13 March 2026)

A2.421. Sanchez Manning was a social affairs correspondent at the *Mail on Sunday* in 2015. She later returned to freelance work and, in early 2025, joined *The Times* as a social affairs correspondent. She gave evidence because she had been asked to address whether she assisted Charlotte Griffiths in relation to Article (57), and in particular whether she had carried out any local enquiries in Monaco.

A2.422. Ms Manning's recollection was limited. She did not initially remember working on the Article and was dependent principally on the contemporaneous emails. Her evidence was that she was in or near Monaco on a different assignment and was asked to assist because of her location. She was not a showbusiness or Diary reporter and had no established working relationship with the Diary desk.

A2.423. The important point in Ms Manning's evidence was clear. She said that she was not asked to go to any hospital and did not do so. She did not obtain information from any hospital in Monaco. Nor did she attend any tennis club or speak to anyone connected with a tennis club. If Suzy/Susie Chambers assisted at all, Ms Manning's evidence was that any such assistance was likely to have been limited to routine local information, such as identifying the Princess Grace Hospital as the main hospital in Monaco. No allegation of UIG was put to Ms Manning in cross-examination.

A2.424. I found Ms Manning to be an honest witness. She was frank about the limits of her memory and about the extent to which she was dependent on the contemporaneous documents. Where appropriate, she made sensible concessions, including accepting that she may have got matters the wrong way round in her written account as to whether she told Ms Griffiths, or Ms Griffiths told her, that the Princess Grace Hospital was the relevant hospital. She did not seek to embellish her involvement. Her evidence has a limited but clear bearing on Article (57): it provides no support for an allegation that any information was obtained from a hospital, whether by blagging or otherwise. The detailed findings in relation to Article (57) are set out in the main judgment.

(45) Sam Greenhill
(17 March 2026)

A2.425. Sam Greenhill is a journalist employed by the *Daily Mail*. He joined the paper, in February 2003, as a general reporter and has remained on staff since then, becoming Chief Reporter, in 2016. In his evidence he described a long career in journalism prior to joining the *Mail*, including work for a variety of publications and, later, the Press Association, where he became Chief Reporter and covered, among other matters, the "*royal beat*". He emphasised that he is a general news reporter, does not have managerial responsibilities, and has undertaken a wide range of domestic and foreign assignments over many years.

A2.426. Mr Greenhill was called as a witness because (a) he is said to have been the source of some information used in Article (26), and (b) the Claimants advance a "*propensity*" case against him by reference to allegations concerning the 2005 Sally Anderson/David Blunkett episode and, separately, an email chain with Mike Behr said to involve flight information concerning Tony Blair.

A2.427. In his first witness statement, Mr Greenhill said that, although he did not recall Article (26) itself, he did remember the specific "*campfire*" aspect because he had spoken to the person who told the *Mail* about it. His evidence was that the News Desk received a tip, that he was asked to check it, that he spoke by telephone to a man who said he had been in Botswana at the same place as Prince Harry and recounted what had been said around a campfire, and that he then passed the information back to the News Desk (or to Rebecca English). He denied having engaged in or commissioned phone hacking or phone tapping. In cross examination, the Claimants put directly to him that the supposed call never occurred and that the campfire information had instead been obtained by listening to voicemails. Mr Greenhill rejected that allegation emphatically. The article-specific issues arising from that evidence are addressed in the main judgment (see [784]-[802]).

A2.428. Mr Greenhill's second witness statement addressed new allegations concerning Sally Anderson/David Blunkett. In outline, he said he was tasked by the News Desk in September 2005 to pursue a tip about Sally Anderson and David Blunkett; he described (i) his role in attending in person with a photographer, (ii) email communications with the person calling herself "*Karen Milligan*" (later said to have been Ms Anderson), and (iii) subsequent steps taken to contact Ms Anderson directly. He gave an account of the source material for the quotations and other content used in the reporting, and denied commissioning UIG.

A2.429. In cross examination, the Claimants focused on: (i) ledger entries said to show ELI payments associated with "*SG*", (ii) the internal timeline/memo to Gordon Rayner (including the entry referring to a "*blag call*"), (iii) the bank account/signatory information, and (iv) notes said to record flight information. In oral evidence Mr Greenhill accepted that he may have used ELI during the relevant period but disputed the premise that the ledger "*date*" necessarily evidenced the date of commissioning; and in re-examination he pointed to invoice structure as consistent with his concern that different dates could be at play (tax date, work date, invoicing, payment).

A2.430. As to the "*blag call*", the Claimants relied on the entry in the timeline/memo and the associated note of the call. Mr Greenhill accepted that the record was of a "*blag call*", and in the course of his evidence accepted, in substance, that he probably made that call to the estate agents to identify who was handling the relevant property.

A2.431. The Claimants also challenged him on how the bank account details and signatories were identified, relying in particular on the wording of a witness statement he provided in 2014 in connection with criminal proceedings, and the correspondence about amendments to that statement. Mr Greenhill explained that he was surprised by the "*I then made enquiries*" formulation when it was shown to him in these proceedings; he maintained that his original draft used "*we*", and that the change to "*I*" occurred in the context of the CPS's requirements and correspondence, and he disputed that this meant he personally undertook the bank enquiries.

A2.432. As to the alleged "*flight details*", the dispute in cross examination included whether certain notes reflected unlawful acquisition of private flight information. Mr Greenhill's account in evidence was that the flight-related notes were part of investigating flight options after publication of a contemporaneous newspaper article, rather than a record of unlawfully obtained passenger details, and he resisted the proposition that they demonstrated "*flight blagging*" or commissioning of unlawful activity.

A2.433. Mr Greenhill was also asked about an email chain with Mike Behr (including an exchange said to reference Tony Blair's travel plans). The Claimants sought to use this as part of the pleaded propensity case and as a challenge to his credibility about knowledge of, and dealings with, "*flight blagging*". Mr Greenhill denied that he asked Mr Behr to obtain flight plans by blagging and denied knowing that Mr Behr could provide such information by unlawful means. Associated's written closing submissions characterised the allegation as resting on a single volunteered line in an email, and relied on Mr Greenhill's evidence that he did not ask for that information and did nothing with it.

A2.434. I found Mr Greenhill to be an honest witness, and I accept his evidence. His manner of answering questions was straightforward and, where the point properly arose, he made sensible concessions rather than seeking to avoid the obvious. A good example is his evidence concerning the "*blag call*" to the estate agents in the Anderson/Blunkett episode: when taken to the contemporaneous record, he accepted that it was a record of a "*blag call*" and did not seek to dispute the character of the document or minimise what it recorded.

A2.435. So far as Article (26) is concerned, my reasons for accepting Mr Greenhill's evidence, and rejecting the allegation that the campfire material derived from voicemail interception rather than a tip passed through the News Desk, are set out in the main judgment (see [797]-[798]). It is sufficient here to say that the challenge to him did not provide a coherent or evidence-based alternative mechanism by which the information was said to have been obtained.

A2.436. The acceptance of Mr Greenhill's evidence is sufficient to dispose of the allegation against him, and strictly removes any need to determine the separate "*propensity*" material relied upon. However, had it been necessary to do so, I would not have found that Mr Greenhill had any relevant "*propensity*" that assisted the Claimants. The admitted "*blag call*", even if one were to assume that it fell on the wrong side of the line, is, in context, a low-level journalistic technique used to obtain limited property-marketing information. It does not demonstrate a propensity for voicemail interception; and even a proven tendency to use one form of UIG, for example blagging, would not, without more, provide cogent support for an allegation of a different kind, for example voicemail interception (see main judgment [44(4)]).

A2.437. The same point applies to the pleaded "*flight blagging*" allegation. I accept Mr Greenhill's evidence on that issue. But, in any event, even if the Claimants had established a propensity on his part to obtain, or receive, travel-related information by improper means, that would not have assisted in proving the distinct allegation advanced against him in relation to Article (26), namely that he obtained the campfire account by voicemail interception. The Claimants' reliance on "*propensity*" in this context therefore lacked focus: it did not identify a specific, relevant pattern of conduct

capable of supporting the allegation advanced, and it did not supply the missing step of a credible unlawful mechanism explaining how the information in question would have been obtained.

(46) Paul Bracchi
(17 March 2026)

A2.438. Paul Bracchi is a journalist employed by the *Daily Mail*. He began his career as a trainee reporter at the *Luton News*, in the early 1980s, later worked for the *Evening Argus* in Brighton, and joined the *Daily Mail* in about 1997. He has worked principally as a feature writer and now holds the title Senior Feature Writer, producing longer form background features, often on crime and social issues.

A2.439. Mr Bracchi was called because he was bylined, with Nicole Lampert, on Article (27), and because the Claimants advanced a pleaded propensity case against him by reference to Schedule C material. His evidence in relation to Article (27) was that, at the relevant time, he was a feature writer rather than a showbusiness journalist. Ms Lampert, as Showbusiness Editor, would provide the showbusiness source material and he would write it up into a longer feature, supplemented by background research and cuttings. He said that he had no relevant showbusiness contacts of his own for Ms Frost Law or Mr Law.

A2.440. Mr Bracchi denied obtaining private information unlawfully, or instructing anyone else to do so. He denied voicemail interception, phone tapping, blagging or deception by him, and denied using ELI, Steve Whittamore/JJ Services, System Searches, Christine Hart or any other third party in relation to Article (27). He accepted that, historically, he had used Mr Whittamore for ex-directory telephone numbers and possibly addresses, and that he had used Christine Hart and System Searches for some purposes, but his evidence was that he did not knowingly commission or use UIG and that none of this related to Article (27).

A2.441. In cross-examination, the Claimants explored Mr Bracchi's historic use of enquiry agents and private investigators, including Mr Whittamore, Ms Hart and System Searches. Mr Bracchi accepted some historic use of such persons or entities, but denied knowledge of unlawful methods and denied using them to obtain private records or other information unlawfully. In relation to Article (27), he maintained that any non-cuttings material would have come from Ms Lampert and that he had no knowledge of Sharon Feinstein as a possible source.

A2.442. I found Mr Bracchi to be a straightforward and truthful witness. His evidence about Article (27) was limited in scope, but coherent. He did not present himself as having undertaken any independent showbusiness investigation. Rather, he explained that his practical role was to write up material supplied by the Showbusiness desk, together with background research from cuttings. I accept that evidence.

A2.443. I also reject the Claimants' attempt to rely on the pleaded Schedule C material as establishing any relevant propensity against Mr Bracchi for the purposes of Article (27). No allegation that Mr Bracchi himself was guilty of UIG in relation to Article (27) was ultimately pursued or put to him. Nor was the Schedule C material put to him in a way that required, or permitted, an article-specific finding that he had used UIG or knowingly used unlawfully obtained material. One Schedule C article was not put

to him at all; the questioning on another went no further than whether he knew Christine Hart used subterfuge, which he denied; and no allegation was put to him that he used ELI or any other UIG in connection with Article (35).

A2.444. In those circumstances, I do not consider it necessary or proportionate to make wider findings on the Claimants' propensity allegations against Mr Bracchi. The issue for determination was whether Article (27) was shown, on the evidence, to be the product of UIG. The detailed findings on that Article are set out in the main judgment.

(47) Richard Kay
(17 March 2026)

A2.445. Richard Kay is a long-standing journalist at the *Daily Mail* and now holds the title Editor at Large. He joined the *Daily Mail*'s Manchester office in 1980, later worked in Belfast and London, was appointed Royal Correspondent in early 1987, and subsequently moved into Features. In about 2002/2003 he became editor of the *Daily Mail* Diary column, a role he held for around 11 years.

A2.446. Mr Kay gave evidence about the operation of the Diary during his editorship. He described a small newsroom team producing a page in a common Diary voice, with tips and items being checked or "*stood up*" before publication. Not every item was written personally by him. He also explained that, from time to time, material could be passed to the Diary in written form by another desk, such as the Newsdesk or Showbusiness desk, and then cut down or rewritten into Diary style.

A2.447. Mr Kay's evidence was directed to Article (31). He did not remember the Article, which was unsurprising given the number of Diary items produced over the period. He located his notebook for 30 June 2005, the day on which he would have been working on the Diary page for 1 July, and noted that it contained no reference to Ms Frost Law. From that, his evidence was that the story was likely to have been given to him in written form by either the Newsdesk or the Showbusiness desk. He accepted that it may have been passed to him by Ms Lampert, but he could not remember and had no note identifying the source of the item.

A2.448. Mr Kay also relied on the fact that the Mirror published a broadly similar story on the same day, from which he inferred that the story was "*going around*". He accepted in cross-examination that there were passages in Article (31) which were not in the Mirror story, including the references to telephone conference calls, confidentiality agreements, and quotations attributed to a friend. He also accepted that, if he had received the item from a *Daily Mail* colleague, he would generally have assumed that it had already been checked or stood up.

A2.449. I found Mr Kay to be an honest witness who did his best to assist the Court in relation to a short Diary item published more than 20 years ago. He did not attempt to overstate his recollection. He accepted the limits of what he could now say, including the possibility that the item had come from Ms Lampert, while making clear that he could not identify who had passed it to him.

A2.450. Critically, no allegation was put to Mr Kay that he had used UIG in relation to Article (31), or that he knew or suspected that information supplied to him had been obtained unlawfully. Nor was Article (31) put to Ms Lampert when she gave evidence.

The detailed findings in relation to Article (31), including the rejection of the payment-based case and the later unpleaded suggestion of a Lampert/Feinstein route, are set out in the main judgment.

(48) Ulla Kloster
(17 March 2026)

A2.451. Ulla Kloster is an experienced journalist and editorial assistant. She first joined the *Daily Mail*, in 1994, and worked on the Nigel Dempster Diary column, from 1994 until October 2003. At the material time, the Diary team included Nigel Dempster, Tim Walker, Helen Minsky and Ms Kloster. She later returned to work on the *Mail on Sunday* and then on the *Daily Mail* Features desk.

A2.452. Ms Kloster's evidence was directed to Article (5), which appeared in the Nigel Dempster Diary column. She did not claim to have written the item and had no specific recollection of how it was sourced. Her evidence was therefore principally directed to the ordinary working practices of the Diary at the time.

A2.453. Ms Kloster described the Diary as heavily led by Nigel Dempster and as operating through networking, contacts, freelancers and material obtained or checked through the *Daily Mail*'s reference library. She explained that Diary items were often assembled from cuttings, with any additional information obtained through calls and contacts, and that stories were sometimes passed between the Diary and other desks.

A2.454. In relation to Article (5), Ms Kloster thought, from her experience of Diary practice, that much of the item appeared to be a "*cuttings job*", although she could not identify the source of the specific "*trees*" detail and had not herself checked the cuttings. She accepted that she could not say whether that detail had previously been reported and that she did not know how it had reached the Diary. She suggested possible lawful routes, including someone in the supply chain or a contact, but made clear that these were possibilities, not recollection.

A2.455. Ms Kloster denied using Gavin Burrows or any other enquiry agents, and said that, to the best of her knowledge, the Diary team did not use enquiry agents. She also rejected any suggestion that the Diary team used phone hacking or phone tapping, explaining that its work was done through contacts, freelancers and conventional journalistic enquiries.

A2.456. I found Ms Kloster to be an honest witness who was careful about the limits of her evidence. She frankly accepted that she did not write the item, had no recollection of how the relevant information was obtained, and could not identify the source pathway for the "*trees*" detail. Her evidence therefore provides no article-specific account of provenance. Its value lies in her description of the ordinary working practices of the Diary at the time, which I accept, while recognising its limited bearing on the actual sourcing of Article (5). The detailed findings in relation to Article (5) are set out in the main judgment.

(49) Christopher Leake
(18 March 2026)

A2.457. Christopher Leake is a retired career journalist. He worked at the *Mail on Sunday*, from 1982, initially as Industrial and Consumer Affairs Editor, and later as Defence and Home Affairs Editor, between 2002 and June 2012. His evidence concerned two *Mail on Sunday* articles published in February 2003, neither of which is an Article sued upon by any Claimant. They were relied upon by the Claimants as part of the broader historical material concerning Steve Whittamore/JJ Services and alleged vehicle-registration checks, including checks said to involve the Police National Computer.

A2.458. Mr Leake's evidence was that he never used, commissioned or knew Steve Whittamore, and never saw invoices for Mr Whittamore or JJ Services while at the Mail on Sunday. He said that the only reason he knew Mr Whittamore's name was because of later press reporting. He maintained that position in cross-examination and rejected the suggestion that he had commissioned Mr Whittamore, or routed any instruction through Mr Dillon.

A2.459. As to the article of 16 February 2003 concerning congestion charge fines, Mr Leake had no recollection of the story and was surprised to see his byline on it. He did not attempt to reconstruct its provenance beyond saying that such stories might have originated from the News Desk. By contrast, he had a clear recollection of the article of 2 February 2003 concerning Bob Crow. His evidence was that the tip came from the News Desk, that he recalled being told there was a photograph of Mr Crow on the back of a scooter, and that any quotations attributed to Mr Crow would have come from him as a contact and would have been accurately noted.

A2.460. I found Mr Leake to be an honest witness who was careful to distinguish between what he remembered and what he did not. He was frank that he could not remember how the registered-keeper detail in the Bob Crow article was obtained, and did not speculate beyond saying that it may have come from the News Desk or from asking Mr Crow who had given him a lift.

A2.461. Mr Leake's evidence has no material bearing on the issues I must decide. The two February 2003 articles were not Articles sued upon by any Claimant, and were deployed only as part of the Claimants' broader generic case concerning historical TPI use. Even if unlawful means were established in relation to those episodes, they would not provide probative propensity material against any relevant journalist for the purposes of the pleaded claims. In those circumstances, no further findings about those articles are necessary or proportionate.

(50) Baroness Elizabeth Sanderson
(18 March 2026)

A2.462. Baroness Elizabeth Sanderson worked at the *Mail on Sunday* between 1997 and 2014, initially as a personal assistant on the Features desk and later as a feature writer. She subsequently worked as a political adviser and is now a member of the House of Lords. Associated served a witness summary for her evidence and, shortly before she gave evidence, she signed a witness statement confirming that summary, subject to minor corrections.

A2.463. Her evidence was directed to two matters: first, historic Features desk use of Jonathan Stafford, including invoice/worklist material from early 2003; and secondly, Article (37) relied upon by the Claimants as demonstrating an alleged propensity on behalf of Baroness Sanderson to use UIG.

A2.464. As to Mr Stafford, Baroness Sanderson accepted that the Features desk used him in time-pressured circumstances to obtain contact details. She denied knowing that he obtained information unlawfully or by blagging, and denied commissioning any "*itemised phone bill*" work. Where an invoice recorded telephone schedule/ex-directory entries under her name, her evidence was that, if she had used Mr Stafford at all, the likely purpose was to obtain contact details so that comment could be sought.

A2.465. As to Article (37), Baroness Sanderson had no present recollection of whether she personally interviewed Nicola Taylor, but denied any knowledge of phone hacking. The allegation that the Article was based on voicemail interception was not put to her. In any event, Ms Taylor's evidence, which was not challenged (see [A2.551]-[A2.553]), was that she herself provided the "*early morning phone call*" information to the *Mail on Sunday* in a paid telephone interview. I address that point in the main judgment (see [1015]-[1021]).

A2.466. I found Baroness Sanderson to be an honest witness. In the event, however, her evidence has little or no bearing on any issue I must decide. She is not a pleaded journalist against whom allegations of UIG are advanced; no allegation of UIG in relation to Article (37) was maintained; and no issue of propensity arises.

(51) Jerry Yanover
(19 March 2026)

A2.467. Jerry Yanover was a witness called by the Claimants. His evidence was connected to, and its admissibility was said to be largely governed by, the evidence of Gavin Burrows. The Court had previously directed that the admissibility of Mr Yanover's evidence would be determined once Mr Burrows had given evidence. In the event, problems with Mr Yanover's availability meant that the Claimants were permitted to call him, on 19 March 2026, before Mr Burrows, with issues of the admissibility of Mr Yanover's evidence to be determined once Mr Burrows had given evidence.

A2.468. In summary, Mr Yanover is a former police officer who, after leaving the Metropolitan Police, became involved in a private investigation business, Active Investigations Services ("AIS"). He described his role in that business as "*front-facing*" (meeting clients and pricing work), rather than undertaking investigations personally.

A2.469. The substance of Mr Yanover's written evidence was directed to the Claimants' broader case about UIG in the private investigator ecosystem in the early 2000s. He said that he was introduced to Gavin Burrows (whom he said he knew as "*Gavin Rhodes*") shortly after AIS began operating. He described Mr Burrows as (i) initially instructing AIS to carry out surveillance work and (ii) later becoming a significant "*subcontractor*" to AIS, supplying what he called "*database*" material, which he said was a euphemism for blagged material.

A2.470. Mr Yanover alleged that, at their first meeting, Mr Burrows demonstrated how to access mobile phone voicemails. He also alleged that Mr Burrows spoke about press work and boasted of working for newspapers, including the *Mail* titles; and that such press work (on his account of what Mr Burrows told him) included phone tapping, blagging, and obtaining private records such as phone records and travel itineraries.

A2.471. Mr Yanover's evidence also covered (at a general level) the fact that AIS was later investigated by the police and that he was convicted and sentenced for criminal offences connected with AIS's activities. He complained that, despite the scale of the investigation, he was not aware of any press figures having been arrested.

A2.472. Mr Yanover further stated that he later formed the view that Mr Burrows had "*informed*" on AIS and that this explained, at least in part, why Mr Burrows was not arrested. That issue was explored in cross-examination as potentially bearing on Mr Yanover's motive in giving evidence.

A2.473. In cross-examination, Mr Yanover accepted that he had not done anything wrong in relation to any of the Claimants, and explained that his "*self-healing*" paragraph was not an assertion of wrongdoing against them but (in substance) his wish to give his "*version of events*" and to see accountability in relation to the crimes of which he had been accused and convicted.

A2.474. Mr Yanover also accepted that, notwithstanding references in his witness statement to introductions to, and meetings with, the press, he did not identify any specific work that he personally had done for any particular newspaper. He accepted, in terms, that he had no direct knowledge of Mr Burrows's alleged work for the press, and that he knew about it only because (on his account) Mr Burrows told him about it.

A2.475. As part of a challenge to Mr Yanover's reliability, Mr White KC took him to three contemporaneous reports of his conviction and sentencing in 2007. Mr Yanover accepted that he had been sentenced to 27 months' imprisonment, but disputed aspects of the reporting. In particular, he was taken to the statement in one report that "*Young denied running AIS right up until the day of his trial when he changed his plea*". Mr White KC put to him that he had changed his plea on the first day of the trial. Mr Yanover denied that he changed his plea at all, and described the report as "*inaccurate and not true*", adding that "*a lot*" of the reporting was wrong.

A2.476. Mr White KC put squarely to Mr Yanover that he was "*a thoroughly dishonest man*". Mr Yanover denied that characterisation, stating that he had acknowledged wrongdoing, served his sentence, and had sought to live a decent life thereafter.

A2.477. Mr Yanover was also challenged on motive and potential bias. It was put to him that he believed Mr Burrows had escaped arrest and conviction by being an informant, that he had harboured a long-standing grudge against Mr Burrows as a result, and that he was prepared to say untrue things about Mr Burrows to get back at him. Mr Yanover denied any grudge and maintained that his account of Mr Burrows boasting of working for the *Mail* was "*completely true*".

A2.478. Mr Yanover was questioned about his contact with Graham Johnson and whether he had been paid or otherwise induced to give evidence. He said Mr Johnson had approached him; he denied being paid or promised payment, denied being offered a

book deal, and denied being paid for participation in a masked documentary associated with "*Hacked Off*". He also said he could not recall precisely whether Mr Johnson first raised with him the suggestion that Mr Burrows worked for Associated, though he maintained that he had not been asked (or paid) to say that Mr Burrows had boasted of working for the *Mail.*

A2.479. The Claimants' written closing submissions did not address Mr Yanover as a witness in any detailed way, beyond relying on him as supportive of their wider case about Mr Burrows.

A2.480. Associated's written closing submissions made a specific procedural/evidential point about Mr Yanover. Associated submitted that any evidence of alleged prior statements made by Mr Burrows to Mr Yanover about working for Associated was inadmissible because those alleged prior statements were not put to Mr Burrows in his oral evidence. More generally, Associated emphasised that admissibility and weight of hearsay or prior statements fell to be assessed by reference to the statutory framework and the Court's previous orders concerning Mr Burrows' evidence.

A2.481. In evaluating Mr Yanover's evidence, I proceed with caution. The cross-examination raised questions about the extent to which he was able reliably to give evidence about matters occurring many years ago, and about the degree to which his account was influenced by his belief that Mr Burrows had "*informed*" on AIS. It also demonstrated that his evidence about press involvement was not based on direct knowledge, but on what he said Mr Burrows told him.

A2.482. As to his credibility, I note that, although the cross-examination challenged Mr Yanover robustly, Associated's written closing submissions did not develop any separate credibility attack on him beyond the procedural point addressed below. I attach only limited significance to the fact of Mr Yanover's conviction in itself, because I have little reliable information about the criminal proceedings beyond what was put to him from the contemporaneous media reports and his own answers. However, I do take into account that he disputed a central feature of that reporting – namely that he changed his plea on the day of trial – maintaining that it was "*inaccurate and not true*", and asserting that "*a lot*" of the reporting was wrong.

A2.483. In any event, and setting aside any issues of credibility, the evidence of Mr Yanover that could bear on any matter I have to decide is of limited scope. The material passage of his evidence was his account of what Mr Burrows was alleged to have said to him about "*working for the Mail*". That was not evidence of any commissioning by Associated, still less of any unlawful conduct in relation to any pleaded article. It was, at most, hearsay evidence of an alleged out-of-court statement which (if admissible) could only operate to undermine Mr Burrows's denial, later in the witness box, that he had worked for the *Mail*. Mr Yanover accepted that he had no direct knowledge of the truth of it.

A2.484. I have considered Associated's objection that the Court should not admit (or should afford no weight to) the evidence of alleged statements by Mr Burrows to Mr Yanover about working for Associated in circumstances where Mr Burrows subsequently gave evidence and was not asked to confirm that he made any such statement. Associated made that point expressly in its written closing submissions, contending that "*the evidence of prior statements allegedly made by Mr Burrows about his work for*

Associated to Mr Yanover (which were not put to Mr Burrows) is inadmissible at the instance of the Claimants".

A2.485. The Claimants relied on Mr Yanover as supportive of their wider case about Mr Burrows, but their closing submissions did not address the admissibility objection advanced by Associated.

A2.486. In my judgment, Associated's point has force. Where a party seeks to rely on an alleged prior statement of a witness who has been called and has given live evidence, fairness ordinarily requires that the witness be given the opportunity to deal with the allegation in evidence. Here, Mr Burrows was available to be asked about the alleged statement said to have been made to Mr Yanover, but the allegation was not put to him.

A2.487. Further, the evidential value of the point is weak in any event. It is a bare assertion by Mr Yanover of what he says Mr Burrows told him, and Mr Yanover accepted that he had no direct knowledge of its truth. In those circumstances, whether analysed as admissibility or (at minimum) weight, I do not treat the alleged statement as a sound evidential basis for any finding that Mr Burrows did work for Associated, still less for any finding relevant to the pleaded incidents.

A2.488. Accordingly, I have not relied upon Mr Yanover's evidence to support any positive finding.

(52) Gavin Burrows
(23 March 2026)

A2.489. I deal with the evidence of Mr Burrows and the issues relating to his evidence in Appendix 3.

B: Witnesses for the Claimants who were not required for cross-examination

A2.490. The following witnesses of the Claimants, who had provided witness statements for the trial, were not required by Associated to attend for cross-examination. Their witness statements therefore stand as the relevant witness's evidence in chief.

(1) Ben Jackson

A2.491. Ben Jackson states that he was Jude Law's personal assistant from 2001 to around 2019 and was also the business partner of Mr Law and, at one time, in a relationship with Sadie Frost's sister. His evidence is directed to the same series of articles concerning Jude Law and Sadie Frost.

A2.492. He says that Mr Law was always a very private person and had very few confidants. As to Articles 1 and 2, while Mr Law was filming in Romania, he recalls the poor signal and frequent reliance on voicemail, and remembers Mr Law privately saying that he was furious about the Soho House incident and wanted to "*take Soho House to the cleaners*".

A2.493. As to Articles 3 to 9, he says that the separation and divorce were tumultuous, that he was often in the middle of it, and that Jude Law and Sadie Frost were often communicating by voicemail when one did not want to speak to the other. He says

that, so far as the divorce settlement was concerned, he does not think Mr Law really spoke with anyone other than his lawyers and perhaps his parents, and that he himself only ever knew in general terms that Ms Frost was getting the new house. As to Article 10, he says that conversations about Raff starting boarding school were very personal and private and, in his view, would not have been discussed beyond Jude, Sadie and Raff.

(2) Billie Piper

A2.494. Billie Piper is an actor and former singer. Her statement concerns the *Mail on Sunday* article "*You're seeing Who?*" published on 26 September 2004 under Katie Nicholl's byline, together with a related payment of £750 to Lee Harpin for a "*Chris Evans/Billie Piper story*". She says that at the time she was married to Chris Evans and working with Christopher Eccleston on *Doctor Who*. She states that much of the Article was, from memory, accurate, although she does not recall any suggestion that Mr Evans was concerned about her relationship with Mr Eccleston. She says that the article referred to a string of rows over the phone and to the content of those calls. Her evidence is that there were arguments; that Mr Evans did leave voicemail messages expressing frustration about the fact that she was working a good deal in Cardiff; and that she distinctly remembers voicemails in which he broke up with her, regretted it and then retracted it. She says that the content of those calls and messages was private and that she does not believe any close friend or family member would have provided the information to Mr Harpin or Ms Nicholl.

A2.495. In cross-examination, Ms Nicholl was expressly taken to the *Mail on Sunday* Article. Passages from the Article suggesting that Billie Piper and Chris Evans had had "*a string of rows over the phone*" and that "*some of the phone calls he made to her have been downright nasty*" were put to Ms Nicholl and it was suggested to her that Lee Harpin, who had been paid £750 for the story as "*a page lead*", had obtained that information through voicemail interception and call data. Ms Nicholl accepted that Mr Harpin had been paid £750, but denied that the information had been unlawfully obtained, saying that she would have "*grilled*" him about his sources and would have made sure that they came from legitimate people close to either Billie Piper or Chris Evans. Later in the same sequence, when it was put to her that there were no supporting notes of any separate legitimate source for the story, she accepted that the story had come from Mr Harpin ("we paid Lee Harpin for the story, so I assume the information has come from Lee Harpin"), but she continued to deny that he had obtained it by voicemail interception or blagging.

(3) Robert Quick

A2.496. Robert Quick is a former senior police officer whose career included service in the Metropolitan Police, as Chief Constable of Surrey in 2004, and later appointment as Assistant Commissioner Specialist Operations for the Metropolitan Police in 2008. His statement is directed to police corruption, private investigators and journalists.

A2.497. He gives evidence about John Ross, whom he says he knew of as a former police officer associated with corruption and with corrupt serving officers. More materially, he describes Operation Nigeria in 1999, a covert infiltration of Southern Investigations. He says that recordings and seized documents showed that Southern Investigations was acting as a clearing house for stories for certain newspapers and

that several journalists had direct relationships with Southern Investigations. He says that, around 2000, he wrote a short report highlighting the role of journalists in promoting corrupt relationships with and making corrupt payments to police officers for stories about famous people and high-profile investigations, and that he recommended an investigation into such activities.

A2.498. He also gives evidence about Stephen Wright, the *Daily Mail* crime correspondent. He says that, in about April-May 2008, he saw senior Metropolitan Police officers socialising with journalists, including Stephen Wright, and that on other occasions he saw John Yates in social situations with Mr Wright. His evidence is relevant as background concerning relationships between journalists and police officers.

(4) Clive Driscoll

A2.499. The evidence relied upon from Clive Driscoll is contained in his trial witness statement, dated 6 January 2026, verified by a statement of truth, together with the witness statement he made to the Leveson Inquiry on 14 March 2012, which his trial statement expressly confirms as true. He also confirmed that he gave oral evidence to the Leveson Inquiry on oath.

A2.500. In the 2026 statement, Mr Driscoll described his long career in the Metropolitan Police Service, including his role as Senior Investigating Officer in the reinvestigation into the murder of Stephen Lawrence. He also referred to a telephone call he received, on 26 November 2025, from a woman calling from a withheld number, who said she knew about Doreen Lawrence's legal claim. According to Mr Driscoll, the caller referred to the Channel 4 *Dispatches* programme, mentioned Gavin Burrows, Graham Johnson, Christine Hart, Stephen Wright and James Hanning, and said that there had been a payment of £350 in respect of certain activity concerning Baroness Lawrence. He said that he passed this information to Doreen Lawrence, who directed him to Imran Khan KC, and that he then spoke to Mark Thomson. He also said that, shortly after midnight the next day, he received two WhatsApp messages from Christine Hart from the same telephone number, but that both messages were deleted before he could read them.

A2.501. In the 2012 Leveson Inquiry statement, which he adopted in his trial statement, Mr Driscoll gave a detailed account of his role in Operation Fishpool, the reinvestigation that ultimately led to the convictions of Gary Dobson and David Norris for the murder of Stephen Lawrence. He explained that, because of the sensitivity and high profile of the investigation, information was kept very closely held and disseminated only on a "*need to know*" basis, and that significant leaks to the press were damaging to the investigation and to the confidence of the Lawrence family. In particular, he addressed the events surrounding the confidential meeting at New Scotland Yard on 7 November 2007 and the publication of the two *Daily Mail* Articles on 8 and 9 November 2007. The detail of that evidence, insofar as relevant to Articles (45) and (46), is considered in the main judgment (see [1141]-[1166]).

(5) Dan Waddell

A2.502. In his first witness statement, Dan Waddell explains that he is a journalist, author and researcher who has been engaged, since April 2022, by the Claimants as a member of the Research Team. That statement concerns the authenticity of a WikiAlpha entry

relating to Gavin Burrows. He says that on 1 April 2023, while carrying out Google searches concerning Mr Burrows, he found the WikiAlpha entry and a user contributions page showing revision history for the username "*Gavin Burrows Private Investigator*". He says that he took a screenshot of the revision history on that date and later, on 16 May 2023, downloaded and saved PDF copies of the entry and revision history, which were then disclosed in the MGN litigation. He also refers to having found in 2021 an archived 27 April 2004 website for IIG Associates via the Wayback Machine, which advertised services including "*bank accounts traced*" and "*Telephone lines intercepted*". His evidence is directed to the provenance and preservation of those materials.

A2.503. In his second witness statement, Mr Waddell gives evidence in answer to Associated's allegation of a "*limitation camouflage scheme*" and in relation to the so-called "*Miskiw files*". He sets out his journalistic background and longstanding working relationship with Evan Harris and Graham Johnson. His evidence is that, in 2019, he had little awareness of the law on limitation beyond the basic point that civil claims are subject to time limits. Limitation was not a subject on which he or Dr Harris were asked to work on in the live litigations. He says that no "*camouflage scheme*" was ever discussed between them or with Mr Johnson.

A2.504. As to the "*Miskiw files*", he says that, on 2 August 2018, he met Greg Miskiw in Leeds, where Mr Miskiw provided him with password-protected CD-ROMs containing the material subsequently disclosed and described as the "Miskiw files". He adds that some of that material, in particular a payment record referring to "MoS" and £500, fed into the "*Victim Memo*" concerning Sir Simon Hughes.

A2.505. Mr Waddell's third witness statement addresses an audio recording provided by Smithfield Partners on 26 January 2026 said to contain a threat being made to Gavin Burrows. That issue was not explored in the evidence of Mr Burrows.

(6) Ellen Gallagher

A2.506. Ellen Gallagher is a partner at Hamlins LLP. She carried out a search of the document database supporting the News Group voicemail interception litigation at an earlier stage of these proceedings. She says that she carried out searches of the database for certain the 2006 Anderson/ Miskiw emails and pages of notes made by Glenn Mulcaire. She confirms that the 2006 Miskiw/Anderson emails were not found on the database. She also explains later searches carried out for pages of the Mulcaire notes and identifies the versions of the notes extracted from the platform.

(7) Jude Law

A2.507. Jude Law is an actor, producer and businessman, and the former husband of Sadie Frost. His statement addresses a series of articles published between 2002 and 2007 concerning his private life and relationship with Ms Frost. He says that he is naturally private and tended not to discuss his private life except with Sadie Frost and a very close inner circle.

A2.508. As to the *Mail on Sunday* article, of 13 October 2002, "*Jude Law plans to sue club over his daughter's Ecstasy tablet …*" (Article (11) – see main judgment [420]-[441]), he says that at the time he was filming *Cold Mountain* in Romania, where phone signal

was poor, and that he frequently left and received voicemail messages. He says that the article's details of what he said about Soho House and the consequences of the incident sounded like private material from a message or conversation.

A2.509. As to the 19 October 2002 *Daily Mail* article "*Model Kate will have her baby christened with a touch of Frost"/"Kate has touch of Frost for new baby*" (Article (12) – see main judgment [442]-[465]), he says the christening information was very private, specific and ultimately inaccurate because the event never happened.

A2.510. As to the 5 February 2003 Article "*The smiley show – Their marriage in turmoil, Sadie*" (Article (15) – see main judgment [509]-[526]), he says that the details of arguments, efforts to shield the children, prescribed medication and a row the night before were very private, and that if such matters were communicated at all it would likely have been by voice messages.

A2.511. In respect of the 2 November 2003 *Mail on Sunday* Article "*Keep that girl away from our kids!*" (Article (19) – see main judgment [621]-[635]), he says the detail that Sadie Frost did not want Sienna Miller as a second mother was highly specific and not something he would have shared with journalists, but the sort of matter that would have been said in a private conversation or voice message between them.

A2.512. As to the 2 October 2004 *Daily Mail* article "*Jude gives Sadie £10m divorce deal*" (Article (24) – see main judgment [725]-[744]); the 8 January 2005 article "*Crazy Sadie v Moody Judey*" (Article (27) – see main judgment [803]-[821]); the 30 June 2005 article "*The Jude v Sadie Show*" (Article (30) – see main judgment [857]-[876]); the 1 July 2005 article "*Sadie's £6million divorce*" (Article (31) – see main judgment [877]-[895]); and the 19 August 2007 *Mail on Sunday* article "*Jude and Sadie's school reunion*" (Article (44) – see main judgment [1124]-[1140]), he says that the financial figures, settlement details, domestic arguments and discussions about Raff going to boarding school were all very accurate, specific and private. His evidence is that he believes such matters could only realistically have come from access to private communications, including voicemails, live calls or messages from lawyers.

(8) Kevin Bonavia MP

A2.513. Kevin Bonavia states that he is the Member of Parliament for Stevenage and Parliamentary Private Secretary to the Attorney General, and that, before the general election in 2024, he was a solicitor at Edwards Duthie Shamash Solicitors. His evidence is directed principally to the affidavit of Gavin Burrows dated 5 March 2021. He says that he has seen the signatures on the final page of each affidavit and confirms that his signature is present on them. He also notes that each document bore the firm's physical stamp, which he says was standard practice when co-signing sworn statements of that kind. Finally, he recalls Graham Johnson requesting a meeting in 2021, which he remembers because it occurred during the Covid-19 pandemic and required him to open the Edwards Duthie Shamash office in Waterloo in order to attend it.

(9) Leslie Chapman (professionally Leslie Ash)

A2.514. Leslie Chapman, whose professional name is Leslie Ash, is an actor married to the former footballer Lee Chapman. Her statement addresses two *Mail on Sunday articles.*

A2.515. The first is the Article, of 12 January 2003, headed "*Curse of the Trout Pout – Leslie Ash is the latest star to fall victim to the craze for lip implants*", by Elizabeth Sanderson. Ms Chapman says that she does not recall ever speaking to Ms Sanderson. She states that the article included medical information about her lip injections, wrongly described them as lip implants, and referred to her visiting her plastic surgeon, which she says was untrue. Her evidence is that a friend's mother had performed the treatment; that she later received a different injection and suffered a bad reaction; that it is true that she paid £1,500 for the injections; and that she does not know how anyone could have known this. She further says that she has been shown a Jonathan Stafford invoice, addressed to Liz Sanderson, referring to professional services for January 2003, and that one item on it concerned her old Wandsworth address for "Tele Sch +1", while another concerned the Tunbridge Wells address of her sister Debbie and niece Candice. She says that her phone number at the time was ex-directory, that she used to speak to her sister a great deal, and that it made her feel sick and shocked to think that both she and her family may have been listened to.

A2.516. Her second article is a *Mail on Sunday* piece, dated 25 April 2004, "*Leslie and Lee had a bitter row before she was …*", by Katie Nicholl. Ms Chapman says that the article contained information about a dinner at Nobu that she and Lee Chapman attended with friends Natalie Smith and Adrian Smith the night before she ended up in hospital. She recalls arranging the dinner by voicemail and text message, and leaving messages for the Smiths asking where they were because they were late. She also says that the article recorded a "*secret visit*" by Lee Chapman to the hospital, which she says was true, and that visits of that kind were arranged by voicemail or telephone, with him telling her when he was on his way. Her evidence is that this was suspicious and intrusive, especially given the article's suggestion that Lee Harpin was merely a fellow diner who overheard matters in a noisy restaurant.

(10) Baroness Luciana Berger

A2.517. In her first witness statement, Luciana Berger describes herself as a British politician, formerly MP for Liverpool Wavertree and, since March 2025, a member of the House of Lords. She addresses the *Mail on Sunday* article, dated 23 January 2005, "*Euan finds love with Straw Jnr's old flame (… and she's after Blair's job too)*", by Katie Nicholl. She says that, in early January 2005, she received a call from O2 informing her that someone had called multiple times to obtain details of calls she had made in December 2004, had reset her voicemail PIN and had succeeded in passing security checks after at least one failed attempt. She says that she made contemporaneous handwritten notes and reported the matter to Colindale Police Station two days later.

A2.518. She further says that after publication of the article she lost contact with Euan Blair, whom she believes wrongly thought she had been behind the story entering the press. Having since seen the article and associated material, she says that the references in the article to constant contact, visits to Downing Street and details of parking arrangements were private, and she now believes that information about her visit to Downing Street was obtained by someone pretending to be her, changing her PIN and accessing voicemail messages, including a message from Euan Blair about the arrangements for the visit.

A2.519. In her second witness statement, Ms Berger says that, having recently seen the transcript of a call between Lee Harpin and Katie Nicholl, and an email chain of 20 January 2005, her memory was refreshed in certain respects. She says that after receiving Ms Nicholl's email she spoke briefly to Euan Blair and also spoke to Lee Harpin because she wanted advice from someone with national media experience. She says she told Mr Harpin only that she and Euan were friends and did not go into further detail. She adds that, after the Article was published, she had no further communication with Euan, and that she did not tell Mr Harpin any information about communications between Euan and Katie Sanders or about Cherie Blair's views, because she had no knowledge of those matters.

(11) Moritz Schirmeister

A2.520. Moritz Schirmeister is a solicitor at Thomson Heath Jenkins & Associates. His statement is directed to the authenticity challenge by Associated to one of the Burrows documents, a signed note by Alison Gollop, dated 7 April 2021. He explains that the note had been signed in the presence of Michelle Hayter, a partner at Frettens LLP. He says that, in light of the authenticity challenge, he contacted Ms Hayter and provided her with a copy of the note. According to his evidence, on 11 December 2025 Ms Hayter confirmed that she had checked her calendar, that she had met Ms Gollop on 7 April 2021 for a "*swear*" or signing, and that the signature and handwriting on the note were visibly hers.

(12) Patsy Kensit

A2.521. Patricia (Patsy) Kensit is an actor, presenter, singer, model and businesswoman. Her statement is directed to a single *Daily Mail* article, published on 18 September 1998, under the headline "*Patsy talks of divorce as love rift with Liam Gallagher grows; crisis for Oasis star's stormy marriage after actress wife quits home*". She summarises the background of her relationship with Liam Gallagher and says that many personal and private events in her life were reported in Associated's newspapers between 1997 and 2010.

A2.522. As to the Article itself, she says that it reported difficulties in the marriage, frequent arguments and that she was thinking of instructing solicitors to file for divorce. Her evidence is that the relationship was volatile; that there was often talk of divorce between them; that the line attributed to a "*friend*" saying that they "*love each other to death but drive each other crazy*" is the sort of thing she would have communicated to a friend in a voicemail; that she had spoken privately to Grainne Fletcher about divorce and may also have spoken by telephone or voicemail to lawyers, but had not sent any letter or attended any meeting; and that she would not have wanted any suggestion of divorce to be put into the public domain. She also says that the Article's reference to an apology note written by Liam Gallagher was true, and that what the article reported was only a small extract from the note. Her evidence is that the Article contained terribly private information from a humiliating period of her life and that she does not understand how such information became available to the newspaper.

(13) Sophia Myles

A2.523. Sophia Myles is an actor whose statement concerns a *Daily Mail* article, dated 14 May 2005, headlined "*Why Charles Dance, 58, thinks Lady Penelope is just FAB*", together

with an ELI invoice, dated 13 May 2005, bearing the subject "*S Myles*" and referring to "*urgent extensive trace enquiries*" carried out on 12 May 2005 for Clemmie Moodie.

A2.524. Ms Myles says that, at the time, she was living alone in a flat in Queen's Park and had kept her relationship with Charles Dance extremely private. She states that only one close friend knew of the relationship; she had not even told her parents. She recalls that, shortly before publication, a *Mail* journalist put a letter through her door asking for information about the relationship, and that she responded in writing saying that she did not discuss her private life. She also recalls that her parents were doorstepped before publication, although they knew nothing about the relationship. Her evidence is that the article disclosed private details of the relationship, including that it was a "*big secret*", where they met and that they spent substantial time together, and that publication caused embarrassment, distress and tension within her family.

(14) Steve Whittamore

A2.525. Mr Whittamore's evidence is summarised in the main judgment (see [126]-[133]).

(15) Timur Moon

A2.526. Timur Moon is a journalist who worked for the *Daily Mail* as a freelance showbiz reporter in the summer of 2005, later returning as a news sub-editor in 2007 and 2008 and again as a showbiz reporter in 2010. His statement is directed to his first period working at the paper in 2005. He says that his work mainly involved writing text for picture-caption stories, carrying out doorstep jobs and trying to generate showbiz stories of his own. He identifies Nicole Lampert as the Showbiz Editor and Richard Simpson as the Deputy Showbiz Editor.

A2.527. His evidence is that, in conversations with Mr Simpson concerning a potential follow-up to a story he had previously written for the *Sunday Express*, he formed the suspicion, on several occasions, that phone hacking and voicemail interception were being used at the *Mail* showbiz desk as a matter of routine to investigate stories and targets of interest. The statement does not identify a specific article of his own by title, but his evidence is directed to newsroom practice and the basis for his suspicion while working on the showbiz desk in summer 2005.

A2.528. Mr Moon's evidence has no real bearing on the issues I must decide. It is opinion evidence and does not concern any of the pleaded Articles or incidents.

(16) Emma Beal

A2.529. Emma Beal is a teacher who previously worked for the *Evening Standard* and at City Hall as an Administration Manager in the Mayor's Office. She states that she began a relationship with Ken Livingstone in 2002 and later married him in 2009.

A2.530. In her witness statement she addresses a *Mail on Sunday* article, dated 16 February 2003, headed "*45 motorists fined already and the congestion charge hasn't even started*", and a JJ Services invoice dated 2 February 2003. She confirms that the invoice records the registration number of the vehicle she owned at the time and the address at which she and Ken Livingstone lived, and that the invoice names David

Dillon as the journalist who instructed JJ Services to obtain that information. She also recalls a brief visit from police officers at City Hall, in 2003, telling her that her car registration appeared on a list that had been found. She says that she was unaware of the article until it was shown to her in this litigation. She identifies the passage in the article stating that she regularly drove Mr Livingstone and their infant son in the Peugeot 206 and that she had been seen using the vehicle for shopping trips. Her evidence is that she was a private individual, that the article appears to have involved both unlawful access to vehicle registration information and physical surveillance of her and her two-month-old son, and that she found this highly intrusive and upsetting.

C: Witnesses for Associated who were not required for cross-examination

A2.531. The following witnesses for Associated, who had provided witness statements for the trial, were not required by the Claimants to attend for cross-examination. Their witness statements therefore stand as the relevant witness's evidence in chief.

(1) Colin Fernandez

A2.532. Colin Fernandez is now an Internal Communications Manager at DMGT Communications, having previously worked on the *Daily Mail* news team. His evidence concerns the 25 May 2011 *Daily Mail* article, "*Two Love Children and a String of Mistresses … The Double Life of Gordon Ramsay's Father-in-Law*", which was bylined to Paul Bracchi and him.

A2.533. Mr Fernandez says that at the time he was a general news reporter, and that Paul Bracchi, who was senior to him, was the feature writer responsible for the overall story. His own role, he says, was to assist with "*on the ground*" factual investigation to stand up the story, including trying to identify and locate women said to be romantically linked with Chris Hutcheson.

A2.534. He remembers going to a property near the river in Greenwich, to an address in Chelsea where a woman declined to comment, and to other addresses, but says that he did not have the overall picture of the story; his role was to provide quotes and facts to help substantiate it. He has been shown an email headed "*ramsay memo*", which reflects what he assumes was a conversation with Karl Collins, and he says that the information he contributed would have come from that conversation and the other enquiries he made, together with enquiries made by Paul Bracchi. He says it was normal practice to use publicly available sources such as birth, marriage and death records, the Electoral Roll, the Land Register, Companies House and social media to research people of interest. He expressly states that he did not instruct Daniel Hanks, had never heard of him before these proceedings, and is not aware of anyone else having done so in relation to this story. He also says that his recollection is that he made no enquiries outside the United Kingdom for it.

(2) Rebecca Hardy

A2.535. Rebecca Hardy is a freelance writer for Associated, formerly *Daily Mail* Showbiz Editor between 1996 and about 1998. In her statement she addresses three articles.

A2.536. First, in relation to the 18 September 1998 *Daily Mail* article, "*Patsy talks of divorce as love rift with Liam grows*", she says that she does not remember the article specifically, but that it was not unusual and concerned a subject written about frequently by the showbiz desk. Having refreshed her memory, she says that the *Mirror* had run a story the previous day with similar quotes, and that it was common practice to rely on information published elsewhere as the basis for one's own article. She says there was considerable speculation at the time about the marriage of Patsy Kensit and Liam Gallagher, and that people close to them were sharing information. She says she would not have used a private investigator to check an address for this article because the showbiz department already knew Liam Gallagher's address, and that such stories were generally worked by placing reporters or casuals on the doorstep while others in the office used their contacts. She says that Christine Hart was a journalist who, so far as she recalls, was used for doorstepping and providing copy or colour rather than addresses or mere tips, and that any payments to her may be consistent with days spent on a doorstep, although she cannot be sure. She also says she was not authorised to approve invoices and does not recall seeing the relevant invoice.

A2.537. Second, as to the 28 September 1998 *Daily Mail* article, "*Felicity going Solo*", on which she was not bylined but which was published while she was Showbiz Editor, she says that she does not remember the article. She explains that Alun Palmer and Paul Bracchi worked for her on the showbiz desk and were trusted journalists, and that Richard Briers, who is quoted in the article, was well known to the department and in a position to comment because he knew Felicity Kendal. She says it is possible that either she or one of the bylined journalists asked Christine Hart to doorstep Ms Kendal's home, but she cannot say for certain. She again says that she does not recall seeing the relevant invoice.

A2.538. Thirdly, in relation to the 28 August 2010 *Daily Mail* article, "*Look who had the last laugh, Hugh*", she says that by that time she was working as a senior interviewer for *Weekend Magazine* and the *Daily Mail*. Her evidence is that she was asked by Maggie O'Riordan to interview Estella Thompson (also known as Divine Brown) and was provided with a telephone number. She says that Barbara McMahon supplied the colour from an in-person meeting in Atlanta, by email, and that she, Rebecca Hardy, then conducted the telephone interview and wrote up the piece. She says that she did not instruct Dan Hanks or any other private investigator in relation to the article, did not authorise Barbara McMahon to do so, does not remember Dan Hanks, and did not see any report he provided. She also says that she had no knowledge of a petty cash entry for "*Background work on Hugh Grant*" and does not recognise the other payments in the extract from the accounting records as relating to this article, apart from the £2,000 paid to her for the interview itself, which she says was the normal amount she received for interviews at that time.

(3) Michael Harvey

A2.539. Michael Harvey was a *Daily Mail* reporter between 1995 and 1998, with a particular focus on royal reporting derived from his earlier work at the Press Association. His evidence concerns a 10 March 1998 article, "*Charles walks out of Hospital after surgery on his knee*". He says that he has no recollection of the article itself, but explains how a story of that kind would ordinarily have been prepared. He notes that the article in the final edition was longer than the one in the first edition and says that

it was standard practice for pieces to be updated during the evening if the story was developing. He thinks it likely that the first edition was based substantially on a Press Association report of the previous day, "*Charles recovers after knee surgery*", and that either he or someone else at the paper wrote it up, with Kate Ginn likely adding detail later in the evening. He says that the additional quote in the *Daily Mail* article from St James's Palace may well have come from a follow-up call to the Palace Press Office, with which he had regular dealings, and that background material about previous sporting injuries probably came from the paper's cuttings library. He further says that the detail that the Prince left hospital with a stick may have come either from a photographer or the Palace. As to the allegation that the article was written with the benefit of unlawfully obtained information from Christine Hart, he says that before these proceedings he had never heard of Christine Hart, Warner News or Warner Detective Agency, that he certainly did not instruct any of them, and that he never obtained, or asked anyone else to obtain, private medical information for any of his articles.

(4) David Jones

A2.540. David Jones is the *Daily Mail*'s Chief Foreign Writer and Senior Feature Writer. His evidence concerns the article, published on 9 February 2013, "*Dying Ali, his fearsome fourth wife and a savage family feud over his £39m fortune*". He says that he remembers this story reasonably well and strenuously denies that he instructed Dan Hanks to conduct illegal searches or to provide social security numbers. He explains that the story came to the features department from Chris White, a US-based freelance journalist who had been in touch with the Muhammad Ali family, and that, as the paper then had no staff correspondent based in the United States, he was sent to cover the story.

A2.541. He says that, having previously been recommended to him as someone who could help locate addresses and phone numbers in the United States, he sometimes used Mr Hanks when he arrived "*cold*" in America without all the contact details he needed. In relation to this article, he says that Chris White had some but not all of the relevant contact information, and that he asked Mr Hanks only for likely addresses and phone numbers for Muhammad Ali Junior, Muhammad Ali and Rahman Ali. He says that he did not request or use any other information in the resulting reports.

A2.542. He explains that, after locating and interviewing Muhammad Ali Junior, he spoke to several other sources, including Charlotte Waddell, Howard Gosser and Bob Gunnell, and that he also used material supplied by Chris White from Rahman Ali. He accepts that the reports supplied by Mr Hanks included social security numbers and vehicle registration details, but says that he neither asked for nor used them and does not understand how those details would have been useful to him. He further says that he believed Mr Hanks obtained the information lawfully, having been told that his private investigator's licence gave him lawful access to databases unavailable to the general public.

(5) Peter Logue

A2.543. Peter Logue is the *Daily Mail*'s Library Manager and has worked for Associated since 1979, moving to the library in 1986. His evidence is not directed to any particular pleaded Article or incident, but to the systems by which newspaper cuttings and other

archive and reference material were kept and made available to journalists at Associated. His evidence is relevant as background to what information resources were available to Associated journalists in-house.

A2.544. He explains that, in the era of physical cuttings, the library cut and categorised stories from the *Daily Mail*, the *Mail on Sunday*, the *Evening Standard* and selected "*opposition*" newspapers. Journalists could request such cuttings from the library counter, particularly after morning conference. He says that the paper also kept bound volumes and microfilm copies of its own newspapers and, for a time, copies of opposition newspapers.

A2.545. He then describes the subsequent move from physical to electronic cuttings systems, first through Dewey, then eLib, then ClipShare, and eventually CHP. He also explains the reference tools available to journalists through the library, including telephone books and other printed reference works, microfiches containing material such as birth, death and marriage records and the UK Electoral Roll, and later digital databases such as the UK Electoral Roll, BT Phone Disc (for searches of telephone numbers), and other tracing and information services that allowed access to addresses, telephone numbers, company information and Land Registry documents.

A2.546. He said that later access was made available to other databases such as TraceIQ, RollCall, WebTrace and Tracesmart, which was owned by LexisNexis, as well as Connexus and Investigate, which were owned by the GB Group. Mr Logue does not remember when which database became live, as they changed their names so often. Through these databases it was possible to access information such as telephone numbers and addresses of individuals, as well as information on companies and documents from the Land Registry. There was also a database called Ancestry, but he said it became too expensive, and so Associated started to use Genealogist. These databases provided information on family trees, and Mr Logue described it as a useful database to find names.

(6) Barbara McMahon

A2.547. Barbara McMahon is a freelance journalist, based in the United States, who has worked for the *Daily Mail* and the *Mail on Sunday* since 2010. Her evidence relates to the 28 August 2010 article, "*Look who had the last laugh, Hugh*", on which she was jointly bylined with Rebecca Hardy. She says she remembers this article quite well because it was one of her first assignments for the *Daily Mail* after returning to New York in 2010. She says that she was asked by an editor on the *Femail* desk to track down Estella Thompson (Divine Brown) and secure an interview.

A2.548. She explains the enquiries she made in Atlanta, including consulting telephone directories, going to the Georgia Records Office, checking local newspapers, and pursuing what turned out to be an incorrect surname for Ms Thompson's boyfriend. She says she eventually found Ms Thompson through her former partner, manager and father of her two eldest children, Alvin C Brown ("Gangsta Brown"), whose number she received from another journalist, Dave Gardner.

A2.549. Her evidence is that Ms Thompson then came to her hotel, they arranged to meet the next day, and she sent notes and observations to Rebecca Hardy so that Ms Hardy could conduct the interview by telephone and write the article. She accepts that she

suggested to Rebecca Hardy that Dan Hanks might be able to help find Ms Thompson or people who knew her, but says that she had never used him before, had been given his details by Annette Witheridge, and understood him to be doing lawful computer searches of public records. She says that she asked him only for contact information, did not ask for or use any social security number, did not notice its inclusion in any report, and has never asked for or used anyone else's social security number for a story. She also says that she forwarded Mr Hanks's invoice to London for payment and suggested that Alvin Brown be paid $500 for facilitating the meeting.

(7) Roger Scott

A2.550. Roger Scott was the *Daily Mail*'s district reporter for the North East and Cumbria for 25 years. He is now retired. His evidence concerns the article published on 29 April 1998, "*Fury as author says: I had to pay Bell*". He says that he does not specifically remember the article, but he does remember longstanding press interest in Mary Bell and says that, since he was bylined, he assumes he was asked to assist with local interviews, most likely by speaking to the victims' families in order to provide reaction for inclusion in the piece. He explains that he had reported on Mary Bell over the years because the families were on his patch and had interviewed them when Bell escaped from prison in 1977, so he may well still have had contact details or local knowledge from that earlier reporting. He says that his ordinary method of finding people was by telephone, by calling at last known addresses, or by asking locally if someone had moved. He categorically denies using any private investigator or search agent for this article and says that, if a family had moved, he would have tried to locate them by asking around the neighbourhood.

(8) Nicola Taylor

A2.551. Nicola Taylor is a documentary maker, television producer and director. Her evidence concerns the *Mail on Sunday* article, of 18 June 2006, "*Heather, an early morning phone call … and the other man in her life*" (Article (37) – see main judgment [1015]-[1021]). She explains that the article concerned her former husband, Ben Noakes, his friendship with Heather Mills McCartney, and an early-morning telephone call which Heather Mills made to her to deny having had an affair with Mr Noakes.

A2.552. She says that, at the relevant time, rumours were circulating and several journalists were pursuing the story. She says that one of those journalists was a woman from the *Mail on Sunday*, whom she thinks may have been Elizabeth Sanderson, and that she had a telephone conversation with her in which she herself disclosed the fact of the call from Heather Mills. She says it was not the case that the newspaper already knew about the call and was asking her about it; rather, she "*broke the news*" of the call to the journalist. She says that she was paid for that interview in the hundreds, not thousands, of pounds. She also says that she told some friends about the call and that such friends are also quoted in the article.

A2.553. In a later part of her statement, she describes dealings with Graham Johnson and a *Byline* article, saying that Mr Johnson was convinced the *Mail on Sunday* had learned of the call through hacking, whereas she told him that the newspaper knew about it because she herself had told the journalist. She maintains that position in the statement

and says that she was not aware of any phone hacking at the *Mail on Sunday* in relation to that story.

(9) Jo-Anne Wiltshire

A2.554. Jo-Anne Wiltshire is a former member of staff at *Night & Day* magazine at the *Mail on Sunday*. Her evidence concerns a *Mail on Sunday* article, of 26 January 2003, relating to Alicia Douvall and Sean Combs. She says that she did not write for the main newspaper and did not write that article. The first time she became aware of it being when it was raised in these proceedings. However, she did interview Alicia Douvall for a *Night & Da*y magazine piece published on 23 February 2003, which she recalls fairly well. She explains that she was a long-form interviewer rather than a news reporter, that her interview with Ms Douvall took place after a studio shoot and was followed by a telephone call to check facts and obtain further detail, and that, having listened again to her tape recordings and reviewed her shorthand notes, the original interview included some mention of P Diddy, while the follow-up call included further detail, including Ms Douvall's account that he had told her to "*leave it, bury it*" but would support a child if he had proof it was his. Her evidence is that most of the direct quotations in the newspaper article came from her *Night & Day* interviews, even though not all of that material ended up in the magazine version, and that once she had filed copy for the magazine the newspaper could use it as it wished. She suggests that the byline in the newspaper was probably used as a courtesy because she had conducted the original interview, but says she had no involvement in the newspaper article beyond that. She further says that she had never heard of Elizabeth Sanderson or Jonathan Stafford, was never asked to use a private investigator, and that using private investigators was not part of the culture at *Night & Day*.

D: Hearsay relied upon by the Claimants

A2.555. The Claimants served hearsay notices in respect of evidence from the following individuals: Robert Crow, John Ford, Greg Miskiw, Glenn Mulcaire and Natalie Pinkham. Mr Crow and Mr Miskiw are both dead and so could not be called as witnesses. In the case of Mr Ford, Mr Mulcaire and Ms Pinkham, Associated made no application to seek cross-examine them. The nature of the documents relied upon differs materially: in some instances the hearsay is contained in a formal witness statement or affidavit verified by a statement of truth or oath; in others it consists of an email or statements attributed to a person in journalistic articles.

(1) Robert Crow

A2.556. The hearsay relied upon from Robert Crow is contained in two documents. The first is a witness statement, dated 14 December 2011, made for the purposes of the Leveson Inquiry, with reliance placed in particular on paragraphs 7 and 8. The second is an extract from the transcript of Mr Crow's oral evidence to the Leveson Inquiry, on 25 January 2012, in which he confirmed the truth of that statement, subject only to correcting "*Whittaker*" to "*Whittamore*". The evidence therefore consists of a signed witness statement later expressly adopted by the witness in oral evidence under oath.

A2.557. In his witness statement, Mr Crow addressed an article published in the *Mail on Sunday* on 2 February 2003, written by Christopher Leake, which showed him

travelling to work on the back of a scooter belonging to his personal assistant, Adrian Scott. He said that the Article disclosed that he had been picked up from his home in Woodford Green and taken to union headquarters at Kings Cross, and that it also identified Mr Scott. He said that neither he nor Mr Scott knew at the time how the reporter had obtained that information. He further stated that it was later revealed to him, as a result of court proceedings arising out of police corruption investigations, that national newspapers had paid for confidential information from police computers. He said that he believed the only way the newspaper could have linked the scooter to Mr Scott was by using its registration number to obtain DVLA information, and that the only way the newspaper could have known that Mr Scott would be collecting him on that particular day was by hacking into their telephones.

A2.558. The transcript of Mr Crow's oral evidence to the Leveson Inquiry is of potentially some significance because it qualifies that last allegation. In that evidence, Mr Crow explained that police officers later told Mr Scott that someone had contacted the DVLA in Swansea, falsely claiming that the scooter had broken down in Wandsworth, in order to discover its owner's identity, and that the information so obtained was then supplied to Steve Whittamore and passed to the Mail on Sunday. However, when asked specifically about his suggestion that the fact of the scooter arrangement on that particular day had been obtained by hacking his or Mr Scott's phone, he accepted that he had no evidence of that and that it was "*guesswork*" on his part. The effect of the oral evidence is therefore to reinforce the DVLA blagging allegation, but to make clear that the phone-hacking allegation was speculative.

(2) John Ford

A2.559. The hearsay relied upon from John Ford is contained in a witness statement, dated 22 September 2021, signed with a statement of truth and accompanied by the usual confirmation and certificate of compliance. The evidence therefore takes the form of a formal signed trial witness statement, but one which was not tested in cross-examination.

A2.560. In his statement, Mr Ford described himself as a former private investigator whose speciality was obtaining confidential personal information by deception, or "*blagging*". He explained in detail how he impersonated targets and extracted information from banks, utilities, telephone companies and others, and said that he also developed methods of persuading internet service providers to alter account settings so that he could gain remote access to targets' email accounts. He described the techniques he used to sound authentic, including accents, vocal disguise, background noise and other devices intended to make the deception convincing.

A2.561. The part of Mr Ford's statement most directly relevant to these proceedings concerns Gavin Burrows. Mr Ford said that he was introduced to Mr Burrows in 2004 by Mick Boddy, whom he described as a professional blagger specialising in recovering telephone billing data. According to Mr Ford, Mr Boddy told him that Mr Burrows was a "*good client*", had "*a lot of work and some top clients*", and operated from Spain. He said that he subsequently learned that Mr Burrows' operations involved landline tapping, hacking and blagging, and that Mr Boddy explained that, besides private and corporate clients, Mr Burrows mainly provided these services "*to the papers*", which he understood to mean the tabloid press. Mr Ford said that between 2004 and 2006 he spoke to Mr Burrows regularly and, on at least two occasions, took

instructions from him on financial enquiries requiring blagging. He described Mr Burrows as extremely security-conscious, using VOIP systems, proxy routing, burner phones and Western Union for anonymous payment.

A2.562. As to the *Mail on Sunday* and the *Daily Mail*, Mr Ford did not say that he had directly supplied either title. Rather, he said that he strongly suspected his product had ended up in both newspapers because tabloid newspapers were prominent and lucrative clients in the private-investigator world, and because several investigators for whom he worked had reputations for supplying blagged data to them. He gave Mr Burrows as one example, saying that there were "*whispers in the trade*", and that Mick Boddy had confirmed his suspicion that Mr Burrows was engaged by a spectrum of tabloids including the *Mail on Sunday*, though he also expressly stated that he never knew that for sure. That part of his evidence is therefore partly direct and partly based on suspicion and information said to have been provided by others.

(3) Greg Miskiw

A2.563. The hearsay relied upon from Greg Miskiw is contained in an affidavit, dated 20 August 2019. The document states that it was made in response to a request from Byline Investigates in advance of publication of a story based in part on information provided by him. It is therefore a sworn affidavit, although not one made in these proceedings. Its contents were not tested in cross-examination.

A2.564. In his affidavit, Mr Miskiw set out his background as a former senior executive at the *News of the World*, later working through Mercury Press Agency and as a freelancer. He said that, until Glenn Mulcaire's arrest in August 2006, he used Mr Mulcaire for his "*full range of services*". He explained that one way in which they worked was that, if Mr Mulcaire obtained a lead for the *News of the World* which was not used, it could be "*recycled*" and sold into another paper; and that, on other occasions, Mr Miskiw might himself be commissioned by a contact in the national press to carry out work using the "*Dark Arts*", which he said was often the term used by those who knew what services he could deploy through Mr Mulcaire.

A2.565. As to the *Mail on Sunday*, Mr Miskiw said that his main contact there was Chris Anderson, though he said he also knew Katie Nicholl. He stated that all of the contacts he listed, including those at the *Mail on Sunday*, knew that he sourced stories through the "*dark arts*", which he said included unlawful means such as blagging and voicemail interception, whether or not they knew about Mr Mulcaire's specific role. He also described an earlier attempt to recruit Ms Nicholl to the *News of the World*, saying that he had told her that the paper had "*special contacts*", by which he meant private investigators such as Glenn Mulcaire and Steve Whittamore, who could help her "*stand-up*" stories.

A2.566. He said that when he later became freelance in 2005-2006, he began calling Ms Nicholl to sell her stories, some of which, he said, would have been gleaned as a result of hacking or other "*dark arts*", though he added that he would not necessarily have said as much explicitly. He identified several targets who, he said, were hacked by Mr Mulcaire and about whom stories were then put up to Ms Nicholl, including Kate Moss, Sadie Frost, Jude Law, Sienna Miller, Heather Mills and Chelsy Davy. He also said that more frequently he called Chris Anderson with tips which he later recognised in Ms Nicholl's column, after which he would seek payment.

(4) Glenn Mulcaire

A2.567. The hearsay relied upon from Glenn Mulcaire is not contained in any witness statement, affidavit or signed document made by him. Instead, it consists of statements attributed to him in three *Byline Investigates* articles dated 11 December 2018, 1 January 2019 and 27 July 2020. The form of this evidence is therefore materially different from that of Mr Crow, Mr Ford or Mr Miskiw: it is journalistic reporting of what Mr Mulcaire is alleged to have told the journalists, rather than a document signed by him and verified by statement of truth or oath.

A2.568. In the first article, "*Mail on Sunday's Links to Fleet Street Phone Hacker – The Secret Proof*", the statements directly attributed to Mr Mulcaire are these: that Heather Mills "*was monitored routinely – a comprehensive and profiled analysis*"; that Ben Noakes's phone "*was hacked because he was a friend of hers*"; and that, at the time, they were "*working for a lot of papers*" and Greg Miskiw told him that the information was for the *Mail on Sunday*. The remainder of the article consists of journalistic narrative, statements attributed to Mr Miskiw and others, and denials from the newspaper.

A2.569. In the second article, "*Mail on Sunday Phone Hacking – 'smoking gun' emails quoted messages to top editor*", the direct statements attributed to Mr Mulcaire are more limited. He is quoted as saying: "*The reason why 'Mail on Sunday' was written on the note was simple – that was the destination of the hacked data*". He is also quoted as saying: "*My assistant transcribed the tape recordings of the voicemails because I didn't have time as I was focused on monitoring the voicemails*". Again, the remainder of the article is narrative about emails between Greg Miskiw and Chris Anderson, background context and denials from the newspaper.

A2.570. In the third article, "*Private investigator Glenn Mulcaire reveals how he hacked ex-Lib Dem MP Simon Hughes for the Mail on Sunday*", the words directly attributed to Mr Mulcaire are more extensive. He is quoted as saying that the operation began as a "*fishing expedition*" by Greg Miskiw to identify "*any boyfriend*" of Simon Hughes by looking at who he was calling and texting late at night, and that Mr Miskiw told him that if the boyfriend could be identified it would lead to "*an extra stream of income from the Mail on Sunday*". He is also quoted as saying that, although he had had an exclusive contract with the *News of the World*, by 2006 that relationship had become strained; that he was "*looking for a new client*"; that he "*started hacking for Greg Miskiw who would sell the product to the Mail on Sunday, among other papers*"; that he was giving a combination of recycled hacked material from the *News of the World* and "*totally new data*" hacked specifically for the *Mail on Sunday*; and that "*[a]ll of this information was passed to the MoS via Greg Miskiw.*" He is further quoted as saying: "*I identified and located Simon Hughes' boyfriend exclusively for the Mail on Sunday*". In relation to notes seized by police, he is also quoted as explaining that these contained "*DDMs*", which he described as "*Direct Dial Mailbox numbers*", together with PINs for voicemail access and a password to obtain itemised billing data and texts, and as saying that he had infiltrated Mr Hughes' bank account and that of his friend in order to look for funding information and cash withdrawals. Those direct quotations are the extent of the hearsay evidence of what Mr Mulcaire is said to have stated in that article.

(5) Natalie Pinkham

A2.571. The hearsay relied upon from Natalie Pinkham is contained in an email, dated 16 October 2025, sent to Prince Harry. The evidence therefore consists of an informal email, not a witness statement or other signed document verified by a statement of truth.

A2.572. In that email, Ms Pinkham specifically declined to provide a witness statement. She said that she and others had previously "*went to battle with NOTW on this*", but was at capacity and did not have the emotional, financial or physical wherewithal to do it all again. She explained that protecting her young family remained her priority and that providing a witness statement could lead to being called as a witness in court, which would be disruptive for both her family and her job. She added that she felt safe in the knowledge that she had "*never once sold a story, been in anyway indiscreet or ever disloyal*", said that she had gone on record confirming this through her lawyer, and categorically denied Katie Nicholl's claims.

E: Hearsay relied upon by Associated

A2.573. The Claimants served hearsay notices in respect of evidence from the following individuals: David Gardner, Catherine Ginn and Claire Murphy. In each case, the evidence is contained in a witness statement verified by a statement of truth. In the case of Mr Gardner and Ms Ginn, in the relevant hearsay notice, Associated declared that the witness resides outside the jurisdiction. In the case of Ms Murphy, permission for the witness not to attend to give evidence was granted on medical grounds without opposition from the Claimants. In relation to Mr Gardner and Ms Ginn, no application to cross-examine was made by the Claimants. None of this evidence was tested by cross-examination.

(1) David Gardner

A2.574. The hearsay relied upon from David Gardner is contained in his witness statement, dated 14 October 2025. It is a formal witness statement verified by a statement of truth and accompanied by the usual confirmation and certificate of compliance.

A2.575. In his statement, Mr Gardner described his background as a former staff reporter and correspondent at the *Daily Mail* in the late 1980s and early 1990s, later working regularly as a freelance Los Angeles correspondent over nearly 20 years.

A2.576. He addressed the article "*Elton: I'm the daddy*", published on 30 December 2010 (Article (51) – see main judgment [1259]-[1288]). He said that, because of the passage of time, he did not initially remember all the details of the story, but located some Associated emails which refreshed his memory. He no longer had his notebook from the time. He recalled working on the Article with Ben Todd and said that Sam Greenhill asked him, on 28 December 2010, to provide an outline of the law in California relating to surrogacy. He said that he also spoke to a fertility expert who told him that the partner listed as the father on a birth certificate is usually the one who provided the sperm. Mr Todd, he said, asked him to obtain the child's birth certificate and that, in Los Angeles, birth certificates were public records. He telephoned the general number for the Births, Deaths and Marriages registry in Los Angeles, identifying himself as a journalist and that, on 29 December 2010, an official told him

that the physical certificate was not yet available, but read out from the computer system the details recorded there, including the child's full name, sex, date and place of birth, the parents' names and the date of registration. He said he did not pay for the information because he did not obtain a physical copy, and that he then sent the details to Mr Todd, who wrote the story.

(2) Catherine Ginn

A2.577. The hearsay relied upon from Catherine Ginn is contained in her witness statement, dated 8 October 2025. It is likewise a formal witness statement verified by a statement of truth and accompanied by the usual confirmation and certificate of compliance.

A2.578. In her statement, Ms Ginn described herself as having been a junior news reporter at the *Daily Mail* from February 1997 to October 1999, and said that she now works in communications for a children's charity, mostly based in Phnom Penh in Cambodia.

A2.579. She addressed the article "*Charles walks out of hospital after surgery on his knee*", published in the final edition of the *Daily Mail* on 10 March 1998. She said that, given how long ago it was, she now had no recollection of the article or of what role she had in producing it. She explained that at the time she was a junior reporter who might have been working on several stories at once and would often have been assisting a senior reporter rather than writing herself, which she said was reflected in the fact that her byline was second.

A2.580. Re-reading the article now, she said that it appeared to be a "*cut job*", meaning that the information largely seemed to have come from previous reporting. She said that her role might have included looking through cuttings for background on Prince Charles' previous injuries or researching knee surgery, but that she could not now remember what her role was in relation to that particular article. She said that she had at times contacted the Palace in relation to stories, but had no recollection whether she did so for this article. She also said she had been shown the relevant pages of the first edition of the *Daily Mail* on the same date, which was a much shorter piece, and that when she was working shifts at the paper she sometimes worked late shifts and helped make updates overnight to different editions, although she could not remember whether she was still working shifts at that time.

A2.581. Finally, she said she had been informed by Associated's solicitors that it was alleged in these proceedings that the article was written with the benefit of information unlawfully obtained by Christine Hart. She said that she had never heard of Ms Hart until Associated's solicitors asked her about her in relation to these proceedings and that she did not instruct her in relation to this Article.

(3) Claire Murphy (née Claire Newbon)

A2.582. The hearsay relied upon from Claire Murphy (Newbon) is contained in her witness statement, dated 13 January 2026, served subject to a hearsay notice dated 22 January 2026. It is a formal witness statement verified by a statement of truth. Permission for the witness not to attend on medical grounds, and for Associated to rely on her witness statement as hearsay, was granted without opposition from the Claimants.

A2.583. In her statement, Ms Murphy explained that lawyers acting for Associated first contacted her by telephone, in April 2024, when she had not read the article relating to Ms Hurley (Article (22) – see main judgment [687]-[705]), could not recall it as it was published more than 21years ago. She said that she told Associated's lawyers she wished to take legal advice before agreeing to speak further.

A2.584. On 22 April 2024, after taking advice, she informed Associated's lawyers that she did not wish to be part of any proceedings. When contacted again, by another ANL lawyer in September 2025, she reiterated that position. She said that it was only after the April 2024 call, and after reading the article and reflecting, that she had a vague recollection of having written it. She then remembered that it had been published during what she believed to have been her final week of regular freelance shifts in the *Mail on Sunday* office.

A2.585. She described herself at that time, in July 2004, as the most junior reporter in terms of experience in the newsroom, with a relatively small contacts book built up over just more than a year of networking. She said she only ever worked for Associated as a freelancer, and was never offered a contract or permanent staff position.

A2.586. Ms Murphy went on to describe her working relationship with Katie Nicholl and her general journalistic practices. She said that, in the summer of 2003, Ms Nicholl asked the then news editor, Paul Field, if she could assist Ms Nicholl in covering entertainment events in the evening, and that she also had responsibility for contacting publicists for radio, television, film and publishing houses in order to seek preview material, exclusive interviews and event access. She said that most of the articles she wrote for the *Mail on Sunday* consisted of a mixture of on-the-record quotations from face-to-face interviews, excerpts from interviews shortly to be published elsewhere, reactions from named sources or groups to new or forthcoming cultural projects, information and quotations from unnamed non-journalist contacts met while covering events, and on-the-ground reporting on news events or attempts to obtain interview or comment on breaking stories assigned by the news desk. She said that, on the whole, she remained unaware of what stories other reporters were working on until they appeared in print, and that Ms Nicholl chose not to share information about her sources with her.

A2.587. As to the particular article, Ms Murphy said she was "*pretty certain*" that, for that article, she would have tried to contact the only person she knew from Ms Hurley's and Arun Nayar's social circle, in order to get an insight into Ms Hurley's thoughts about Mr Grant's new romance, for what she described as a light-hearted piece reflecting the depth of goodwill and friendship between Ms Hurley and Mr Grant at the time. She said that this person was also known to Katie Nicholl as a source and had never worked as a journalist. She also said she was "*pretty certain*" that she would have visited Associated's cuttings library, in order to obtain a collection of print articles from across the national press containing information already in the public domain and to write up the background.

A2.588. In relation to Lee Harpin, she said that she had no clear memory of ever having met him or spoken to him; that he was not a contact of hers and she had no established working relationship with him. She was pretty certain she would have known his name as a journalist because she would have read his byline in the national press. She stated in terms that, even though she did not recall ever speaking to Mr Harpin, she could be

absolutely certain that, had anyone at the *Mail on Sunday* suggested that she contact him to speak to one of his sources, or had she been asked to write up quotes sourced by him, she would only ever have done so in good faith, believing all information and quotations supplied to have been sourced legitimately.

A2.589. She further stated that she did not instruct anyone, nor was she asked to instruct anyone, to intercept a phone call or voicemail, obtain itemised phone bills, or bug a phone, car or building in gathering information for this story or for any other story she wrote during her time at the *Mail on Sunday*. She never once heard anyone discuss phone hacking or bugging in front of her during the 16 months she freelanced in the *Mail on Sunday* office. She concluded by absolutely refuting any inference that, in writing the story, she used quotations that she "*must have known*" were the product of UIG.

Appendix 3: Gavin Burrows

A: The evolving status of Gavin Burrows' evidence

(1) The Claimants' initial choice: hearsay, not a trial witness

A3.1. The Claimants' pleaded case treated Mr Burrows as an important evidential "*building block*". Notwithstanding that, when witness statements were exchanged, in October 2025, the Claimants did not serve a trial witness statement (or witness summary) from Mr Burrows under CPR Part 32. Instead, they served a Civil Evidence Act 1995 notice seeking to rely upon selected documents attributed to him as hearsay, including (in particular) the document, dated 16 August 2021, purporting to be a witness statement signed by Mr Burrows.

A3.2. Because the Claimants proposed to rely on that material as hearsay, Associated Newspapers Limited obtained an order under CPR 33.4 permitting them to cross-examine Mr Burrows on the hearsay statements identified in the Claimants' CEA notice.

(2) Refusal at trial of the attempt to widen the Burrows' hearsay

A3.3. During trial, the Claimants sought permission to rely on additional documents said to record statements by Mr Burrows as hearsay: the Further Hearsay Application (see [A1.44]-[A1.45]). The Court refused that application, holding that it was made very late, sought (in substance) to reverse a deliberate decision about the selection of hearsay evidence, and would undermine the disciplined operation of the hearsay regime and cause prejudice to Associated.

(3) The Claimants' Application to call Mr Burrows

A3.4. The Claimants then applied for directions about how Mr Burrows' oral evidence could be taken. In the judgment of 12 March 2026 ([2026] EWHC 556 (KB)), the Court rejected the proposal that Mr Burrows should be called as a witness of the Court, but granted the Claimants relief from sanctions (CPR 32.10/CPR 3.9) to enable them to call him as their own witness and conduct a limited examination-in-chief: see [A1.46]-[A1.48]. This exceptional course, the Court found, was justified by the seriousness of the allegations and the importance of hearing from him directly.

A3.5. That relief was expressly conditional and confined (as crystallised in an order of the Court of 12 March 2026). The key constraints were:

(1) the Claimants' examination-in-chief was confined to the subject-matter of the hearsay evidence that had been subject to Civil Evidence Act hearsay notices, and only insofar as they bore on "*relevant live issues*" (as set out in the annexed list);

(2) non-leading questions in chief (save where agreed), and the Claimants were bound by the answers in the ordinary way;

(3) the Claimants could not deploy prior inconsistent statements or treat him as hostile unless the Court so permitted on an application made during examination-in-chief; and

(4) nothing in the permission enabled circumvention of the statutory hearsay scheme (s.6 Civil Evidence Act 1995).

A3.6. Critically, the Court's judgment recorded (as common ground) the forensic consequence of the Claimants' election. Having called Mr Burrows as their witness, they could not rely upon his hearsay evidence (i.e., the hearsay previously the subject of the Claimants' hearsay notices) and, in support of their case at trial, were limited to the admissible evidence he gave in the witness box (in chief, cross-examination and any re-examination), subject always to the statutory rules governing prior statements.

(4) Hostile witness at trial

A3.7. On 23 March 2026, during Mr Burrows' examination-in-chief, the Claimants made an application to treat him as hostile. Following submissions, the Court granted the application, and Mr Sherborne was permitted to cross-examine Mr Burrows before he was cross-examined by Mr White KC for Associated.

B: Summary of Gavin Burrows' evidence at trial

(1) Overview

A3.8. The evidential starting point (consistent with the Court's previous orders and the general law of evidence) is that questions put to Mr Burrows are not evidence of their own content unless he accepted/adopted them. The evidence is what he said in answer to the questions asked of him and, in particular, includes the contents of two previous witness statements – dated 8 March 2023 and 25 September 2025 – which he expressly adopted during cross-examination by Mr White KC.

A3.9. Mr Burrows' witness statement, dated 8 March 2023, was prepared after he made contact with Associated and he was referred to Associated's lawyers. It records (amongst other matters) his response to the pleaded allegations that he had carried out UIG for Associated. The witness statement was relied upon by Associated in support of the Summary Judgment application that was refused on 10 November 2023 (see [A1.1]-[A1.3]).

A3.10. Mr Burrows' second witness statement, dated 25 September 2025, was prepared with the assistance of his own independent solicitors (with Associated agreeing to pay their fees). Largely based on what was said by Mr Burrows in this second witness statement, on the date for exchange of witness statements, Associated served notices challenging the authenticity of documents that Mr Burrows said were not signed by him.

(2) The evidence given at trial

A3.11. Mr Burrows gave his evidence remotely. In initial questions from Mr Sherborne, he confirmed his name and described the names under which he had traded in business. He stated that he had traded as "Gavin Burrows", explained that he had been referred to as "Gavin from Rhodes" (by reference to Rhodes Associates), and identified several company names from memory. He repeatedly asserted, at the outset, that the August 2021 witness statement relied on by the Claimants was "*fake*", that he did not write it, and that the signature on it was not his.

A3.12. In response to questions about his professional background, Mr Burrows said he became a private investigator in 1994. He stated that, between 2000 and 2003, he worked for several organisations and that the only newspapers he had worked for were the *News of the World* and *The Sunday People*. He also asserted that he had only invoiced newspaper 15 times in three years, and that the remainder of his work was primarily corporate.

A3.13. When asked about telephone-related services, Mr Burrows said that the "*theatre*" about obtaining ex-directory numbers was overstated and explained that, historically, ex-directory numbers could be obtained from databases by someone with the relevant access, rather than by "*actors*" ringing utility companies. He said he did not provide any other telephone-related services and repeatedly answered that he provided "*none*" beyond that.

A3.14. Mr Burrows denied involvement in computer hacking, saying that he did not get involved in hacking and that the idea of him being involved in computer hacking was "*quite laughable*". In the same sequence of evidence he also denied providing vehicle-tracking services. He described himself as not using subcontractors "*as such*", and gave evidence about a company Active Investigation Services ("AIS"), including his assertion that he avoided "*phone taps*" and inquiries of the Police National Computer.

A3.15. Mr Sherborne then took Mr Burrows to material relating to an IIG website, purportedly offering his services, and to apparently advertised investigative services (including references to tracing bank accounts, bill analysis/call itemisation, tracing emails, "*Mobile & GSM interception*" and "*Phone triangulation*"). Mr Burrows asserted that this material was connected with what he described as a "*sting*" or "*entrapment*" exercise, intended to "*snare*" a particular group of targets, and he repeatedly denied that he in fact provided the services described.

A3.16. In that context, Mr Burrows said that the website was "*a joint operation*" and stated expressly that it was a joint operation "*between ourselves and the security services*". He also asserted that it was "*a joint operation between two governments and us and the City of London*", and said that it could be explained to the Court further by his counsel "*in chambers*". That was an invitation Mr Burrows renewed several times, but which neither side sought to take up, and which the Court did not accept.

A3.17. Consistently with that account, Mr Burrows denied obtaining phone bills or call itemisation ("*I never did*"), denied that he traced emails ("*I never traced an email in my life*"), and denied that any interception services were in fact provided, repeating that "*the whole thing was a sting*".

A3.18. Mr Burrows was also asked about his dealings with journalists. He gave evidence that he received instructions at the *News of the World* from Geoff Webster, and said he had not spoken to Rebekah Brooks. In his account of events in Spain, he described being introduced to a journalist, Nigel Bowden, and described a meeting in Mallorca involving Paul Henderson ("Hendo") in circumstances he characterised as a personal favour rather than paid work. He denied having worked for Associated Newspapers Limited or receiving payments from it.

A3.19. Still being examined in chief by Mr Sherborne, Mr Burrows gave evidence about being introduced by Mr Henderson to another individual at Associated (whom he recalled as a news editor called "Nick"), and that nothing came of that introduction. He also described an occasion when Mr Henderson called him in relation to a dispute about the source of information in a story involving Leslie Ash, which he said led to the introduction to the news editor, but he denied that he was paid for that assistance and maintained that he had not "*worked for*" Associated.

A3.20. Mr Sherborne showed Mr Burrows Article (23) concerning Ms Hurley ("*Liz: why I'll never have another baby unless I can marry the father*": *Mail on Sunday*, 1 August 2004), and asked whether he recognised the article or had anything to do with it, including the quotations attributed in it. Mr Burrows denied recognising the Article and denied having anything to do with it, including denying any involvement with the quotations.

A3.21. During this phase of his evidence, Mr Burrows also made broader assertions about his relationship with Graham Johnson, including allegations about fabrication of statements and the provenance of his social-media account. He asserted that a Twitter account had been set up by Mr Johnson and another person and that he was not in control of it until a later handover, and he used that to explain why he disputed responsibility for some tweets shown to him.

A3.22. After a further exchange concerning an article and the role of a "*trusted representative*", Mr Sherborne applied for permission to treat Mr Burrows as a hostile witness. The video-link to Mr Burrows was paused while the application was addressed.

A3.23. After the grant of the hostile witness application, Mr Sherborne questioned Mr Burrows by reference to several documents (including documents attributed to Mr Burrows and communications said to emanate from him). Mr Burrows repeatedly denied that the August 2021 witness statement was his, denied that its signature was his, and denied that he had carried out UIG for Associated. He also denied that he had provided information for the specific articles put to him on that basis, including those relating to Ms Hurley and Ms Frost.

A3.24. In that same hostile-mode questioning, Mr Burrows was challenged on his evidence that he would never sign off an email "*Regards, Gavin*". He was shown an email to Ms Liz Hartley (Associated's in-house head of legal), signed "*Regards. Gavin*". Mr Burrows accepted that this email was his, but said that it was "*a private joke*". He gave no further explanation. He maintained his position that the August 2021 statement and other documents relied upon by the Claimants were not authored by him.

A3.25. Mr Sherborne also asked Mr Burrows about the affidavit, dated 5 March 2021, purportedly sworn by him, including passages said to describe work for "*Hendo*" at the Mail on Sunday. Mr Burrows denied that this was his statement and continued to deny the proposition that he had done unlawful work for Associated.

A3.26. Mr Sherborne further put to Mr Burrows the proposition that earlier statements (said to have been made by him) were true and that his later denials were fabricated.

Mr Burrows rejected those propositions. At the conclusion of Mr Sherborne's questioning, Mr White KC commenced cross-examination on behalf of Associated.

A3.27. At the outset of his cross-examination, Mr White KC took Mr Burrows to an email, of 5 January 2023, sent by Mr Burrows to the editorial legal department, in which Mr Burrows stated that he did not know why his name was attached to the claim, referred to investigators being paid for statements, and asserted that evidence/research in many claims had been made up and that investigators had been offered bribes. Mr Burrows explained that the email was prompted by his anger at what he said was false attribution of statements and his belief at the time that Baroness Lawrence was being misled.

A3.28. Mr White KC then took Mr Burrows through the two witness statements, dated 8 March 2023 and 25 September 2025, which Mr Burrows adopted in the manner explained in Sections B(3) and B(4) below.

A3.29. After taking Mr Burrows to the September 2025 witness statement and the statement of truth, Mr White KC asked him directly whether what he said in that witness statement was true. Mr Burrows replied in emphatic terms that it was ("*Oh, absolutely. I swore on the Bible.*").

A3.30. Mr White KC then turned to a matter Mr Burrows had mentioned in his evidence, namely a complaint to the Law Society. He took Mr Burrows to an email of 19 August 2023 sent by Mr Burrows to Nadia Banno, a solicitor at Baker McKenzie with the subject line "*FYI Law Society Complaint*". Mr Burrows said that he had been updating her about the complaint he had made and the response he had received, and that he had been told he needed to take the matter to the Solicitors Regulation Authority.

A3.31. Mr White KC then took Mr Burrows to a further page in that exchange. He drew attention to the passage beginning "*I have now found out this was used as evidence in court*", followed by the statement "*I never worked for The Sun …*", and to the later paragraph beginning "*The signature is not mine on The Sun statements …*". Mr Burrows accepted that those passages appeared there, and reiterated that he never worked for *The Sun*. He also said that he could not have made a statement about working for *The Sun* at the relevant time and added (in response to the same sequence) that he could not see any signature from him on the page, but that he "*must have put [his] true signature underneath*" (as he put it).

A3.32. After asking Mr Burrows some further questions about his September 2025 statement (see [A3.37] below), Mr White KC confirmed that he had no further questions.

A3.33. There was no re-examination by Mr Sherborne, and Mr Burrows' evidence then concluded.

(3) The 8 March 2023 statement: adoption and what it contains

A3.34. In cross-examination by Mr White KC, Mr Burrows was taken to his witness statement, dated 8 March 2023. He accepted that it was his statement and agreed that, in it, he addressed the pleaded allegations involving him and denied that he had done what was alleged.

A3.35. The March 2023 statement itself contains categorical denials that he was instructed/commissioned by Paul Henderson, the *Mail on Sunday* or the *Daily Mail* to conduct UIG; denials of subcontracting such work; denials of being paid (cash or otherwise) by those alleged; and corresponding denials in relation to the pleaded targeting allegations advanced in the individual claims.

(4) The 25 September 2025 statement: adoption and what it contains

A3.36. In cross-examination by Mr White KC, Mr Burrows was taken to his 25 September 2025 statement. He accepted that it was his statement; accepted that it was prepared with the assistance of his own independent solicitors (with costs paid by Associated Newspapers Limited); and accepted that he received no payment other than those fees being paid. Mr Burrows confirmed that what he said in the September 2025 statement was true. Having affirmed it on oath, it forms part of his evidence.

A3.37. Later in cross-examination, Mr White KC asked Mr Burrows to comment on the suggestion that his evidence in the September 2025 statement was prompted by a falling-out with Graham Johnson and amounted to "*revenge*". Mr Burrows denied that, saying he did not have the time to waste on revenge and repeating that he had contacted Associated because he believed Baroness Lawrence had been told something that was untrue. Finally, Mr White KC asked Mr Burrows what his motivation was for giving the long and detailed statement to an independent solicitor. Mr Burrows answered by reference to his complaint that stories had been "*planted*" about him in the press (describing them as calling him unreliable and using other epithets), and that he had kept what he called a "*dignified silence*" for a period but had reached a point where "*enough's enough*".

A3.38. The September 2025 statement provides a detailed narrative of his dealings with Graham Johnson and others connected with Hacked Off. It includes: (i) an account of his physical and mental condition in 2020-2021 (serious injury, medication, alcohol use, and recovery by end-2022); (ii) an account of being paid by Dan Waddell (described as an associate/paralegal) to give "*expert opinion*" on how stories might have been sourced, including a figure of £600 per session; and (iii) the assertion that he was repeatedly asked whether he worked for the *Daily Mail*, and that he repeatedly said he had not.

A3.39. The statement contains further factual assertions about: meetings with Anjlee Sangani (two meetings only, including one with David Sherborne present briefly in a square), his account of gifts offered at the first meeting, and his assertion that Anjlee Sangani was not involved in the preparation of any witness statement and did not explain any practice direction obligations to him.

A3.40. It also sets out his account that he gave Graham Johnson access to his email accounts for editing book material; that he agreed to a Twitter account being set up for him and that he did not control it until July 2022; and that he later discovered tweets/re-tweets from the account which he says were not authored by him.

A3.41. The statement then gives (a) an explanation of why he says he "*tested*" the due diligence of Graham Johnson and Dan Waddell by falsely telling them he had worked for the *Mail* titles, and (b) the account that he later told them he had been "*winding them up*", and their reactions (as he describes them).

A3.42. The September 2025 statement contains a detailed, paragraph-by-paragraph commentary on the purported August 2021 statement. For present purposes, the recurring themes are: (i) repeated denial that he worked for the *Mail on Sunday* or *Daily Mail* (save one limited informal assistance relating to Richard Branson in 2000); (ii) denial that "*phone hacking/landline tapping*" was his "*USP*"; (iii) assertion that various details were derived from book interviews and were woven into a "*witness statement*" without his knowledge; and (iv) denial of the specific "*targeting*" allegations in the Claimants' pleaded case (e.g. allegations concerning Elizabeth Hurley, Sir Elton John, David Furnish, Prince Harry and Sadie Frost Law).

A3.43. In the "*signature*" section, he states he believes the August 2021 signature is forged; offers to provide handwriting samples; states that he did not work with Anjlee Sangani on preparation of any witness statement; and denies sending the 16 August 2021 email with a link, giving reasons (including his health, lack of technical ability, and his account that emails from the period were missing when he checked).

A3.44. The statement also includes allegations of surveillance/harassment and threats affecting him and his family (including that the threats were reported to police and a crime reference number is given).

A3.45. Finally, the statement addresses the documents disclosed by the Claimants (including a purported 14 February 2022 statement, a purported 29 March 2021 statement, a purported schedule of articles, and other items). He states he does not recognise those documents as his statements and disputes their provenance/content in various ways.

C: The rival submissions on Mr Burrows

A3.46. Both sides treated the "*Burrows*" issues as sufficiently significant to warrant discrete treatment in closing submissions. The Claimants advanced a dedicated section addressing Mr Burrows as part of their general discussion of private investigators and UIG. Associated likewise addressed the Burrows allegations separately, focusing on both the procedural/evidential consequences of the way the case was advanced and the effect of Mr Burrows' oral evidence at trial.

(1) The Claimants' submissions

A3.47. The Claimants submit that Mr Burrows "*made a career*" of undertaking mobile and landline interception, landline tapping and blagging, and that one of his key clients was Associated until 2007. They contend that, in 2021, Mr Burrows made admissions which (on their case) amount to confessions of unlawful conduct undertaken for Associated, being commissioned by Mr Henderson at the *Mail on Sunday*. They rely upon what they describe as a body of documentary and public material generated in 2021–2022 which they say is consistent and supportive of that allegation.

A3.48. In particular, the Claimants identify a series of statements and documents attributed to Mr Burrows, including (amongst others) a sworn affidavit, dated 5 March 2021; a four-page note and a table of articles, dated 29 March 2021; witness statements given in the NGN litigation (including 13 May 2021 and later statements); the 16 August 2021 witness statement relied upon by the Claimants; and later material including a February 2022 document and broadcast/interview material. They submit that these

materials comprise repeated and consistent admissions by Mr Burrows of the unlawful methods he used and of his alleged commissioning by Mr Henderson/Associated.

A3.49. The Claimants submit that the documentary record supports authenticity and provenance of these documents. They rely (inter alia) on their case that the affidavit and March 2021 documents were sworn/signed, that evidence was taken in person in March 2021, and that the 16 August 2021 statement was transmitted by email link and was reviewed/signed in a manner that can be traced through email chains and compliance certification. They submit that subsequent NGN statements (endorsed with statements of truth and compliance certificates) describe methods consistent with the August 2021 statement; and they also rely upon social media material as part of the same evidential picture.

A3.50. Against that background, the Claimants submit that there was then a "*reversal of position*" which they attribute to the breakdown in Mr Burrows' relationship with Mr Johnson. They contend that the Court should distinguish between two phases: (i) an earlier phase, during which Mr Burrows made repeated admissions/"*confessions*" (which they say were truthful), and (ii) a later phase, after the falling-out, in which he sought to retract and disavow that material (which they say was not truthful). They submit that Mr Burrows' hostility at trial and his attacks on Mr Johnson (and others) provide the context for understanding his later retractions and denials.

A3.51. The Claimants further submit that, notwithstanding the procedural history and the Court's rulings about the evidential status of the material once Mr Burrows was called, the Court can and should treat the earlier statements and documents as reliable evidence of his admissions in the earlier phase; and they invite the Court to reject the contention that the later retractions should be preferred simply because they were given later in time.

(2) Associated's submissions

A3.52. Associated submits that the Claimants' "*Burrows*" allegations were amongst the most serious matters advanced in the proceedings and that, by the time of trial, the Claimants had narrowed the Burrows' case substantially. Associated submits that the case was opened on the basis that only a limited number of pleaded articles remained as the "*live Burrows*" issues, and it contends that there was (and is) an absence of contemporaneous documentation evidencing Mr Burrows' involvement in those specific articles or evidencing any commissioning of Mr Burrows by Associated at all.

A3.53. In relation to the trial evidence itself, Associated submits that when Mr Burrows was called by the Claimants, he stated, unequivocally, that he did not do work for Associated and had never been commissioned by Mr Henderson. Associated accepts that the Court permitted the Claimants to treat him as hostile, but submits that Mr Burrows was angry and argumentative, that his credibility was undermined in questioning about work for other newspaper groups and by reference to contemporaneous payment records, and that he became confused between the various statements made or attributed to him. Associated submits that the Court should treat allegations attributed to him as incapable of providing a sound evidential basis for findings unless corroborated by contemporaneous records or other testimony.

A3.54. Associated's primary submission, however, is directed to the legal and procedural consequences of the Claimants' election to call Mr Burrows as a witness and to the proper operation of the statutory scheme governing prior statements. Associated submits that the way the matter "*played out*" must be analysed through s.6 Civil Evidence Act 1995 and ss.3-5 Criminal Procedure Act 1865. It submits that the combined effect is that the Claimants can only rely on previous statements attributed to Mr Burrows if they can "*prove that [Mr Burrows] has made at other times a statement inconsistent with his present testimony*". Associated submits that Mr Burrows' "*present testimony*" is his live oral evidence, which included confirming as true his 25 September 2025 witness statement made with the benefit of independent legal advice.

A3.55. Associated submits that the critical question is not merely whether Mr Burrows signed one or more previous documents, but whether those documents contain his words, as opposed to words written by Mr Johnson. It contends that the evidence of Mr Johnson and Ms Sangani is insufficient to prove that the August 2021 statement was a statement "*made by*" Mr Burrows, and therefore the Claimants have failed to discharge the burden of proof required to rely upon it. Associated further submits that the August 2021 statement is not "*resurrected*" merely because it was put to Mr Burrows after he was treated as hostile; and that this is not a typical hostile witness case because the authenticity/attribution of the previous statement is itself in dispute. It also submits that the statement does not represent evidence taken in compliance with PD57AC.

A3.56. In the alternative (i.e. if the Court were to conclude that the Claimants have proved that Mr Burrows made previous inconsistent statements), Associated submits that the Court should nevertheless treat the 16 August 2021 statement and the 29 March 2021 table as unreliable and afford them no weight. It submits that these were not witness statements taken properly by a solicitor subject to professional duties to the Court, but rather reflect Mr Johnson's account of what he says Mr Burrows told him and a re-hashing of Ms Sangani's recollection of what she was told; and that, on any view, they should not be relied upon to make findings on the serious allegations advanced against Associated.

D: Reliance on previous Burrows' statements

A3.57. The parties' submissions on Gavin Burrows raise several distinct questions which must be resolved as to the status, admissibility and permissible use of material attributed to him. Leaving aside Associated's complaints about the conduct of the Burrows allegations at trial, the key questions are:

(1) the proper approach – including the governing legal principles – to previous statements made by Mr Burrows upon which the Claimants want to rely;

(2) applying those principles, upon which previous statements of Mr Burrows can the Claimants rely? and

(3) the impact of the previous statements on the assessment of Mr Burrows' evidence.

(1) The principles governing prior statements by Mr Burrows

A3.58. In their closing submissions, the Claimants have not specifically addressed this issue.

A3.59. Associated submits that the legal framework is framed by (i) the Claimants' election to call Mr Burrows as their witness; (ii) the Court's order permitting the Claimants to call Mr Burrows having abandoned reliance on his hearsay statements as evidence; and (iii) the statutory regime governing the Claimants' use of prior statements to challenge the evidence of Mr Burrows, specifically s.6 Civil Evidence Act 1995 and ss.3-5 Criminal Procedure Act 1865.

A3.60. The Court's Order of 12 March 2026 provides, so far as material:

> "3. Subject to Paragraph 4 below, the Claimants are granted relief from sanctions and shall be permitted to call Mr Burrows as a witness at the trial for the purposes of giving oral evidence in chief confined to (a) the subject matter of the Burrows Hearsay Documents insofar as (b) they address relevant live issues in the litigation (being the pleaded allegations insofar as they have been pursued with a relevant witness at the trial) as set out in the Annex to this Order.
>
> 4. The permission granted to the Claimants in paragraph 3 above is subject to the following conditions:
>
> (a) The Claimants' examination of Mr Burrows be confined to the matters identified in the annexed list of issues.
>
> (b) The Claimants shall not be permitted to rely upon, introduce, or seek to adduce any further statements, documents, or alleged accounts said to emanate from Mr Burrows or to ask questions of him about any issues that are not relevant to the issues that remain live in the litigation.
>
> (c) Save and to the extent agreed with the Defendant, Mr Burrows' examination in chief must be conducted with non-leading questions and the Claimants will be bound by Mr Burrows' answers in the ordinary way. The Claimants may not impeach his evidence, deploy prior inconsistent statements, or treat him as hostile unless, and until, the Court is satisfied – on an application made during examination-in-chief – that he is hostile in the strict legal sense.
>
> (d) Nothing in this permission entitles the Claimants to circumvent the statutory scheme governing hearsay evidence. In particular, having called Mr Burrows as their witness, no prior statements of Mr Burrows may be adduced as evidence save in accordance with s.6 CEA 1995 and, in support of their case at trial, the Claimants will be limited to the admissible evidence that Mr Burrows gives in evidence in chief, cross-examination and any re-examination.
>
> (e) Permission does not extend to any reconsideration of the Claimants' failed Burrows Further Hearsay Application. The Claimants may not seek to achieve indirectly through oral

evidence what they have been refused directly by way of late hearsay reliance

(f) The Defendant will be entitled to cross-examine Mr Burrows in the usual way.

(g) Any re-examination of Mr Burrows by the Claimants will be subject to the usual restrictions and time limited as set out below…"

A3.61. s.6 Civil Evidence Act 1995 ("CEA 1995") provides:

"**Previous statement of witness**

(1) Subject as follows, the provisions of this Act as to hearsay evidence in civil proceedings apply equally (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings.

(2) A party who has called or intends to call a person as a witness in civil proceedings may not in those proceedings adduce evidence of a previous statement made by that person, except—

(a) with the leave of the court, or

(b) for the purpose of rebutting a suggestion that his evidence has been fabricated.

This shall not be construed as preventing a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead) from being adopted by a witness in giving evidence or treated as his evidence.

(3) Where in the case of civil proceedings section 3, 4 or 5 of the Criminal Procedure Act 1865 applies, which make provision as to—

(a) how far a witness may be discredited by the party producing him,

(b) the proof of contradictory statements made by a witness, and

(c) cross-examination as to previous statements in writing,

this Act does not authorise the adducing of evidence of a previous inconsistent or contradictory statement otherwise than in accordance with those sections.

This is without prejudice to any provision made by rules of court under section 3 above (power to call witness for cross-examination on hearsay statement).

(4) Nothing in this Act affects any of the rules of law as to the circumstances in which, where a person called as a witness in civil

proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in the proceedings.

(5) Nothing in this section shall be construed as preventing a statement of any description referred to above from being admissible by virtue of section 1 as evidence of the matters stated".

A3.62. ss.3-5 Criminal Procedure Act 1865 ("CPA 1865") provide:

"**How far witness may be discredited by the party producing.**

s.3 A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may, in case the witness shall in the opinion of the judge prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

As to proof of contradictory statements of adverse witness.

s.4 If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examinations as to previous statements in writing.

s.5 A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the indictment or proceeding, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he may think fit."

A3.63. Associated submits that, read together, s.6 CEA 1995 and ss.3-5 CPA 1865 create the statutory gateway for any reliance on prior inconsistent statements once a party has called a witness. In particular, it submits that the Claimants can only "*rely*" on prior statements attributed to Mr Burrows if they can prove, within the meaning of s.3 CPA 1865, that he "*has made at other times a statement inconsistent with his present testimony*".

A3.64. Associated submits that the Claimants have not satisfied that gateway. It treats Mr Burrows' "*present testimony*" as his live oral evidence (including his confirmation of the truth of his 25 September 2025 witness statement made with the benefit of independent legal advice) and submits that the requisite inconsistency has not been proved so as to permit reliance on earlier statements.

A3.65. Associated further submits that the critical question is not simply whether Mr Burrows signed documents, but whether the statements relied upon (in particular the 16 August 2021 statement) contain Mr Burrows' own words as opposed to words written by Mr Johnson or reduced into writing by Ms Sangani. It submits that the evidence of Mr Johnson and Ms Sangani leaves that in real doubt, so that the Claimants have not proved the earlier statements to be statements "*made by*" Mr Burrows for the purposes of the statutory scheme.

A3.66. Finally, Associated submits that the statutory scheme is not circumvented by the fact that Mr Burrows was treated as hostile: a prior statement is not "*resurrected*" as substantive evidence merely because it was put to him and disavowed, particularly where (as Associated contends) there is a real question whether the 16 August 2021 statement sets out evidence given by him at all.

A3.67. In analysing the operation of the statutory scheme in this case, it is helpful to distinguish between (i) the limits on what the Claimants were permitted to do in examination-in-chief under the order of 12 March 2026, and (ii) the use of prior inconsistent statements for impeachment purposes once (and only if) Mr Burrows was properly held hostile.

A3.68. As to examination-in-chief, the order of 12 March 2026 granted relief from sanctions on a confined and conditional basis. The Claimants' examination-in-chief was limited to the subject matter of the Burrows Hearsay Documents, and the order prevented the Claimants from using examination-in-chief to expand the evidential case by introducing further statements or alleged accounts said to emanate from Mr Burrows, particularly in circumstances where the Further Burrows Hearsay Application had been refused.

A3.69. That is distinct from impeachment. The order did not permit the Claimants to deploy prior inconsistent statements or treat Mr Burrows as hostile unless and until hostility was established. Once that threshold is met, s.6(3) CEA 1995 makes clear that any adducing of a previous inconsistent or contradictory statement must be "*in accordance with*" ss.3-5 CPA 1865. The statutory provisions do not, of themselves, confine the class of inconsistent statements to those identified in any hearsay notice.

A3.70. I therefore accept that the Claimants' election to call Mr Burrows as their witness brings into play s.6 CEA 1995 and, through s.6(3), ss.3-5 CPA 1865, and that the statutory scheme imposes a gateway for reliance on prior inconsistent statements. The scheme also prescribes a sequence. First, the circumstances of the supposed statement, sufficient to identify the particular occasion, must be put to the witness and he must be asked whether or not he made it. Secondly, only if the witness does not "*distinctly admit*" having made it may proof be given, by other evidence, that he did in fact make it. Of course, if the witness does admit making the statement, there is no need to prove it.

A3.71. In a case such as the present, where authorship/authenticity is disputed, the statutory sequence under ss.3-4 CPA 1865 demonstrates why the focus cannot be on the mere existence of a signed document. The relevant question is whether the witness is proved to have made a particular prior statement which is said to be inconsistent with his present testimony. That necessarily requires identification of the specific passage(s) relied upon. The point is illustrated by the affidavit of 5 March 2021. It is an 18-page wide-ranging narrative dealing with many topics. The statutory scheme is not concerned with a global assessment of such a document as a whole, but with whether a witness is shown to have made within it an identified statement which is said to contradict his present evidence. If, when this statement is put, the witness does not distinctly admit making it, the question becomes whether the party relying on the previous statement has proved, by other evidence, that he did in fact make it.

A3.72. It follows that the fact that a prior statement was put to Mr Burrows – whether before or after he was held hostile – does not, without more, convert it into substantive evidence of its contents. Where a prior inconsistent statement is proved but not adopted, it does not form part of the witness's evidence of the truth of its contents. Its principal significance is to bear upon credibility and the weight to be attached to the witness's evidence.

A3.73. Against that framework, I turn to the individual prior statements relied upon by the Claimants and consider, for each, (i) how it was put to Mr Burrows, (ii) whether he distinctly admitted making it, and (iii) if not, what proof was adduced that it was made, and with what consequence (if any) for the assessment of credibility.

(2) Upon which previous statements of Mr Burrows can the Claimants rely?

A3.74. The issue addressed in this section is which earlier statements said to have been made by Mr Burrows the Claimants may properly rely upon, and for what purpose, having regard to the statutory scheme governing the use of prior statements.

A3.75. It is convenient to begin by identifying the "*previous statements*" that were in fact put to Mr Burrows by the Claimants. These were not confined to the five documents listed in the Claimants' CEA notice. The 12 March 2026 order confined the Claimants' examination-in-chief and prevented the Claimants (absent a hostile ruling) from impeaching their own witness, but once Mr Burrows was treated as hostile and leading questions were permitted, additional documents (including documents outside the CEA notice) were in fact deployed in questioning (including, in particular, the 5 March 2021 affidavit).

A3.76. The disciplined approach which the statutory scheme requires (and which I adopt below) is as follows. For each alleged prior statement I identify: (i) the previous statement that was put; (ii) whether Mr Burrows admitted making it or instead denied it; and (iii) if he denied it, the evidence relied upon to seek to prove that he did make it.

A3.77. The principal documents put to Mr Burrows by the Claimants as alleged prior statements were the following:

(1) **The purported witness statement, dated 16 August 2021 and the associated email chain.** The witness statement (and related emails) was put to

Mr Burrows. He was asked directly whether the emails were his and whether the witness statement was his, and whether the signature on it was his. He denied sending the emails and denied making the witness statement. He also denied that the signature was his, characterising the emails as "*made-up*" and saying the statement was not written by him.

(2) **29 March 2021 table/schedule of articles**. In this schedule ("the March 2021 Schedule of Articles") several articles are identified (4 concerning Ms Hurley: Article (4), Article (5), Article (8) and Article (23); 3 concerning Hugh Grant; and 2 concerning Ms Frost Law: an article, published in the *Mail on Sunday* on 12 November 2000, upon which no claim has been brought and Article (24)). The document was put to Mr Burrows. He was asked whether the signature on the statement of truth was his. He denied that it was his signature and denied that he "*wrote that statement*". However, his answers went further: he accepted that he had been asked to look at such a list, but said he treated it as "*banter*" (and was surprised it had been deployed as evidence).

(3) **29 March 2021 witness statement.** This document was put to Mr Burrows. He was asked whether the signature was his. He denied signing it and denied that the contents were true, asserting that he did not write it.

(4) **The 5 March 2021 affidavit.** The affidavit was put to Mr Burrows. He was asked whether he remembered swearing it and whether the signature was his. He denied that the signature was his and said he had no recollection of signing it; he suggested it was produced in connection with a book project and asserted it was "*fabricated*".

(5) **28 September 2021 witness statement from NGN litigation.** Mr Burrows was asked whether he signed the relevant statement and whether the contents were true. He denied signing the statement, denied the signature, and denied the substantive assertions (including those describing unlawful methods), calling them "*a complete and utter fabrication*".

(6) **Alleged social media posts/tweets.** Several Tweets were put to Mr Burrows. He was asked whether particular posts were his. Although at times his answers were argumentative, and went off at a tangent, did not admit authorship of any of the Tweets.

A3.78. In respect of each of these documents (save perhaps for questions on individual Tweets), however, the Claimants did not put particular statements to Mr Burrows and ask him whether he made them. I appreciate that Mr Burrows was a difficult (at times truculent) witness, and that the exercise was a difficult one. Nevertheless, the statutory framework requires a focus. The result was a generalised attack on Mr Burrows' credibility by reference to these earlier statements.

(3) The parties' submissions

A3.79. Associated submits that, as a consequence of the 12 March 2026 order and the statutory scheme, the only prior statements which the Claimants were entitled (in principle) to deploy in support of their case were those within the existing CEA notice, and that (in any event) only two of those documents materially addressed the

remaining live "Burrows" allegations: the March 2021 Schedule of Articles and the disputed witness statement of 16 August 2021. It further submits that, because Mr Burrows denied making those statements, the Claimants must prove that he made them; and it contends that their proof evidence (principally the evidence of Mr Johnson and Ms Sangani) is insufficient, particularly given the irregularities surrounding preparation and certification of the August 2021 statement.

A3.80. Associated further submits that, even if proof were established, the primary forensic effect of putting inconsistent statements to a hostile witness is to undermine credibility, not to convert the statements into the witness's evidence; and it submits that the Court must address first whether a witness who has given conflicting accounts is creditworthy at all before considering whether any part of the prior statements should be relied upon.

A3.81. The Claimants submit (in substance) that there is a substantial body of documentary material in 2021–2022 in which Mr Burrows made repeated admissions of unlawful methods and of acting for Associated, which they characterise as his "*first phase*". They identify (amongst other things) the 5 March 2021 affidavit, the March 2021 signed documents (including the March 2021 Schedule of Articles), the 16 August 2021 statement, later NGN statements, and posts on Twitter. They contend that the authenticity question is "*simple*": Associated has served notices to prove but does not advance a fraud case; and the witnesses dealing with provenance and authenticity are said to have been largely unchallenged. They also rely on the proposition that the Court should distinguish between the "*first phase*" admissions and later retractions said to have been triggered by Mr Burrows falling out with Mr Johnson, noting that Associated chose not to serve Mr Burrows' statement from September 2025.

(4) Discussion and conclusion

A3.82. I accept Associated's submission that it is necessary to focus on evidence from Mr Burrows relevant to and capable of supporting the Claimants' claims. In their opening, the Claimants relied on Mr Burrows only in respect of four Articles: Article (5), Article (8), Article (23), and Article (24). Subject to issues of their admissibility, the only Burrows' documents in which he deals with these Articles are the March 2021 Schedule of Articles and the disputed witness statement of 16 August 2021.

(a) The March 2021 Schedule of Articles

A3.83. The March 2021 Schedule of Articles was put to Mr Burrows. He denied signing the document and denied authorship of the substantive content. He accepted that he had been asked to look at such a list, but said he treated it as "*banter*".

A3.84. Ms Sangani's evidence was that Mr Burrows wet signed two significant documents on 29 March 2021 in her presence, including the March 2021 Schedule of Articles of "*admitted unlawful articles*", and that she had double-checked and was "*absolutely sure*" of that (see [A2.110]-[A2.111] above). Although the inconsistency between her second and third witness statements was explored, it was not put to her that she was not present when the wet signatures were applied.

A3.85. Mr Johnson's evidence touching the March 2021 Schedule of Articles was as follows. In his second witness statement, he did not describe the circumstances in which the

document was signed. Instead, having described the execution of Mr Burrows' March 2021 affidavit before a solicitor, he said (based on his experience of seeing Mr Burrows sign documents) that the witnessed signature on that affidavit was the same as the manuscript signatures on (among other documents) the March 2021 Schedule of Articles. In cross-examination, when it was put to him that his witness statement did not say, in terms, that he had seen Mr Burrows sign the two 29 March documents, Mr Johnson responded that he had ("*Yeah, I saw him sign those documents*"), but that he had not assisted in the preparation of them. Later, when asked whether his first meeting with Ms Sangani at Mr Burrows' premises was before or after the 29 March documents were signed, he answered that it was before, because they were signed "*at a later meeting*" at which Ms Sangani and Mr Burrows were present.

A3.86. Notwithstanding the rather inconsistent evidence given by Mr Johnson, I am satisfied, on Ms Sangani's evidence, that Mr Burrows "*made*" the statements in the March 2021 Schedule of Articles. Ms Sangani's evidence confirms that she saw him sign it. Mr Burrows' evidence was unsatisfactory, but he did confirm looking at the list. His explanation of it as "*banter*" – whatever that means – does not provide a convincing basis on which to reject Ms Sangani's evidence and his confirmation that he had seen and discussed the list corroborates it.

A3.87. This conclusion goes only to proof that the schedule was made/adopted by Mr Burrows. Questions as to its reliability and weight fall to be considered under the subsequent issues and require consideration of the totality of the evidence, including what Mr Burrows said in his oral evidence.

(b) The disputed 16 August 2021 witness statement

A3.88. The starting point is that Mr Burrows did not distinctly admit making the August 2021 statement. On the contrary, when the statement and the related email chain were put, he repeatedly denied that the emails were genuine and denied that the statement was his; he also denied that the signature was his.

A3.89. In those circumstances, the Claimants can only rely on the statements contained in the document if they prove (by other admissible evidence) that Mr Burrows did in fact make it. Their proof case relies materially on provenance evidence relating to the drafting/assembly process, the transmission and signature process, and the email chain said to record circulation and return of the signed statement.

A3.90. I am unable to accept that that evidence proves that the August 2021 statement was "*made by*" Mr Burrows in the relevant sense. The difficulty is not confined to whether Mr Burrows applied an electronic signature or whether an electronic link existed. The more fundamental problem is that, on the evidence about the process by which the statement was produced, it is not possible reliably to identify what (if any) of the words appearing in the statement represent words used by Mr Burrows, as opposed to wording generated by others and attributed to him.

A3.91. Ms Sangani's own evidence was that she was in touch with Mr Johnson "*throughout the preparation and signing*" of the 16 August 2021 statement, and not with Mr Burrows; and she accepted in terms that she did not take Mr Burrows through

PD57AC, and that the only person she spoke to about the Practice Direction was Mr Johnson.

A3.92. Further, Ms Sangani's evidence was that the August 2021 statement was drafted and based, in material part, on Mr Johnson's memos of his meetings with Mr Burrows and other pre-existing documents, rather than on solicitor-led evidence-taking in which she asked questions and recorded Mr Burrows' responses in a way that permitted later verification of what he had actually said.

A3.93. Against that background, the solicitor certificate of PD57AC compliance is not capable of providing the assurance that it ordinarily would, because the evidence demonstrates that the core safeguard which PD57AC is designed to provide – namely responsibility of the relevant legal representative for ensuring that the witness has been properly taken through the relevant requirements and that the statement records the witness's own evidence – was not, in substance, present (see [A2.116]-[A2.125]).

A3.94. The participation of Mr Johnson in the dynamic of preparation of the statement materially compounds that difficulty. The evidence was that Mr Johnson was the channel through which the practice direction requirements were (if at all) communicated to Mr Burrows; and the drafting inputs included Mr Johnson's meeting memos. In those circumstances, even if the documentary record is sufficient to establish that a signed document was circulated, it does not permit a reliable conclusion that the words in the August 2021 statement were Mr Burrows' words.

A3.95. The Claimants placed substantial reliance on what they characterised as the wider body of contemporaneous and near-contemporaneous material in which Mr Burrows made broadly similar allegations (including across different proceedings), and on the proposition that those repeated "*phase 1*" confessions corroborate the 16 August 2021 statement. Even if such material were capable of lending some support to the contention that Mr Burrows was willing, at that time, to make statements of this general nature, it does not address the evidential problem I have identified. The issue here is not whether Mr Burrows made some statement alleging unlawful activity in broad terms, but whether the Claimants have proved that the particular words contained in the 16 August 2021 witness statement were his words, as opposed to wording generated by others and attributed to him through the process by which that statement was assembled. The Claimants' reliance on the existence of other statements made around the same period therefore does not materially assist in proving that the contents of the 16 August 2021 statement were "*made by*" Mr Burrows in the relevant sense.

A3.96. I have made findings as to Ms Sangani's evidence (see [A2.122]-[A2.125] above), and in particular that I do not accept her evidence insofar as it suggests that the August 2021 witness statement was taken and certified in a manner providing reliable assurance that its contents are Mr Burrows' own words. I rely on those findings here.

A3.97. The Claimants also relied on the point that Associated did not advance a "*fraud case*". That submission misunderstands the position. Where a document's authenticity or authorship is put in issue, it is not necessary for the challenger to prove fraud in order to require proof of authenticity. The consequence is simply that the party relying on the document must prove that it is what it is said to be. The statutory scheme likewise

proceeds on proof: if the witness does not distinctly admit making the statement, proof must be given that he did in fact make it.

A3.98. For those reasons, I am not satisfied that the Claimants have proved that the purported witness statement, dated 16 August 2021 was "*made by*" Mr Burrows in the relevant sense.

A3.99. The consequence of this decision is that, under the statutory framework, the Claimants may rely upon the March 2021 Schedule of Articles as a previous statement made by Mr Burrows, subject to the assessment of its reliability and weight below, but not upon the disputed witness statement of 16 August 2021.

E: Overall assessment of Mr Burrows' evidence

A3.100. I have dealt above with the status and use that can properly be made of the various statements attributed to Mr Burrows. For the purposes of the issues I must decide, the position can be stated shortly. By the end of the trial, the only remaining relevance of Mr Burrows' evidence was in relation to Article (5), Article (8), Article (23) and Article (24). The question is whether his evidence provides support for the Claimants' allegation that, in relation to any of those Articles, he was instructed by Associated, or by someone acting on Associated's behalf, to obtain information by UIG, or that he did in fact obtain information by such means.

A3.101. It does not. Mr Burrows gave no credible evidence that he was involved in any of those Articles. In his oral evidence, he denied involvement in them and denied having obtained information for them by hardwire tapping, voicemail interception or any other form of UIG. He also denied having worked for Associated, denied having been commissioned by Mr Henderson to undertake UIG, and denied that the disputed witness statement of 16 August 2021 was his statement. For the reasons I have given, the Claimants have failed to prove that the 16 August 2021 witness statement was "*made by*" Mr Burrows in the relevant sense. It follows that they cannot rely upon that document as a proved prior statement by him.

A3.102. I accept that the disputed statement of 16 August 2021 is, on its face, detailed. At an earlier stage of the proceedings, I considered that it might provide a basis upon which the Claimants could seek corroboration of some of the specific details attributed to Mr Burrows. But that is not where the evidence ended. No independent corroboration has been advanced which proves that Mr Burrows was commissioned by Associated to carry out UIG, or that he did so in relation to Article (5), Article (8), Article (23) or Article (24). There is no contemporaneous instruction, payment record, invoice, communication, note or other document evidencing any such commission by Associated, by Mr Henderson, or by anyone else on Associated's behalf.

A3.103. That absence of corroboration is important. The mechanism advanced in the 16 August 2021 statement was that Mr Burrows' work for Associated was commissioned by Mr Henderson. Mr Henderson denied that he ever instructed or commissioned Mr Burrows to undertake the alleged enterprise of UIG. I have addressed Mr Henderson's evidence elsewhere and have accepted his denial (see [A2.198], [A2.200]-[A2.208] and, in relation to Article (5), [289]-[290] and [300]). In those circumstances, the disputed and unproved August 2021 statement cannot supply the missing evidential link.

A3.104. I add this. Even if, contrary to my conclusion, the Claimants had proved that the 16 August 2021 witness statement was "*made by*" Mr Burrows, I would not have accepted the contents of that statement as reliable or true. Proof that a document was made by a witness is not the same as proof that what it says is accurate. The alleged admissions in the August 2021 statement would still have had to be assessed against the evidence as a whole. On that assessment, I would have rejected them. They are unsupported by any contemporaneous instruction, payment record, communication or other documentary evidence linking Mr Burrows to Associated or to any of the remaining Articles; they depend centrally on an alleged commissioning relationship with Mr Henderson which I reject; they were disowned by Mr Burrows in his oral evidence; and, for the reasons I give below, Mr Burrows is not a witness on whom I could safely rely unless his evidence is clearly corroborated by reliable independent material. There is no such corroboration. Accordingly, even on the alternative footing that the August 2021 statement had been proved to be a prior statement made by Mr Burrows, I would have attached no material weight to it in determining whether UIG was proved in relation to Article (5), Article (8), Article (23) or Article (24).

A3.105. Nor does the March 2021 Schedule of Articles materially assist the Claimants. Although I have found that the Claimants have proved that Mr Burrows made or adopted that schedule, that conclusion concerns admissibility and attribution, not reliability or weight. The schedule was disowned by Mr Burrows in oral evidence. He described the exercise, in substance, as "*banter*". I do not accept that explanation as a reliable account of how the document came into existence, but the important point is that the schedule is not supported by episode-specific corroboration capable of proving that Mr Burrows was commissioned by Associated, or that he obtained information by UIG for any of the remaining Burrows Articles. It is not enough, in a case of this seriousness, that a document exists in which allegations are attributed to Mr Burrows. The Court must be satisfied, on the evidence as a whole, that the allegations are true. I am not so satisfied.

A3.106. My assessment of Mr Burrows as a witness is stark. His credibility was comprehensively undermined. His evidence was argumentative, evasive, internally inconsistent and, at times, extraordinary. He made sweeping allegations of fabrication, forgery, conspiracy, bribery and misconduct against a range of people. He alleged that statements, signatures, emails and social media material had been fabricated or manipulated. He advanced elaborate explanations for documents and websites, including assertions about government or security service involvement, without providing any coherent or reliable evidential foundation for those claims. He frequently departed from the question asked, made collateral allegations, and had repeatedly to be reminded to answer questions directly.

A3.107. I do not consider Mr Burrows to be a witness on whom I can safely rely for any disputed proposition unless it is clearly corroborated by reliable independent evidence. That conclusion applies both to his oral denials and to earlier statements attributed to him. The fact that his oral evidence was unsatisfactory does not make the earlier disputed allegations true. Conversely, the existence of earlier documents in which allegations are attributed to him does not make those allegations reliable. The Court is not required to choose between accepting his oral evidence wholesale and accepting the disputed earlier material wholesale. The proper course is to consider whether the

Claimants have proved, by admissible and reliable evidence, the article-specific allegations which remain in issue.

A3.108. The Claimants have not done so. It may be that the full truth about Mr Burrows' involvement in this litigation, his dealings with Mr Johnson and others, and the provenance of all the documents attributed to him cannot be fully resolved on the evidence before me. I do not need to resolve those collateral matters. This is not an inquiry into Mr Burrows. These are civil claims in which the Claimants bear the burden of proving, on the balance of probabilities, that the relevant information in the pleaded Articles was obtained by UIG for which Associated is legally responsible.

A3.109. For that purpose, Mr Burrows' evidence provides no reliable support. He did not give credible evidence that he was involved in Article (5), Article (8), Article (23) or Article (24). The disputed 16 August 2021 statement has not been proved to be his statement and, in any event, I would not have accepted its contents as reliable. The March 2021 Schedule of Articles is unsupported by sufficient corroboration and carries no material weight on the article-specific issues I must decide. The alleged commissioning mechanism through Mr Henderson is denied by Mr Henderson and unsupported by contemporaneous documentation. In those circumstances, I am not satisfied that Mr Burrows was instructed by Associated, by Mr Henderson, or by anyone acting on Associated's behalf, to carry out UIG in relation to any of the remaining Articles, or that he in fact provided information obtained by UIG for those Articles.

A3.110. It follows that the Burrows material does not assist the Claimants in proving UIG in relation to Article (5), Article (8), Article (23) or Article (24). To the extent that the Claimants invite findings of UIG in relation to those Articles (or more generally) by reliance on Mr Burrows, that invitation is rejected.